United States Court of Appeals for the Second Circuit

APPENDIX

77-5017 ORIGINAL

IN THE

United States Court of Appeals

For the Second Circuit

In the Matter of

PRECISION POLYMERS, INC.,
PRECISION THERMOPLASTICS CORP.,
FLO-TITE PLASTICS CORP.,
Debtors.

ROBINTECH, INCORPORATED,
SHILTECH INCORPORATED and
PLASTILINE, INC.,
Appellants,

against

PRECISION POLYMERS, INC. and
PRECISION THERMOPLASTICS CORP.,
Appellees.

On Appeal from the United States District Court for the Southern District of New York

JOINT APPENDIX

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PAGINATION AS IN ORIGINAL COPY

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I

Docket Entries

NAME OF BANKRUPT/DEBTOR

[illegible]

Last First Middle

PRECISION POLYMERS, INC.

CHAPTER OR SECTION	CHAP. XI-322
DATE PETITION FILED	10/20/76
DATE CLOSED	
DISCHARGE	☐ Granted ☐ Denied ☐ Waived
DATE DISCHARGED	
PETITION DISMISSED? ☐ YES	DATE DISMISSED
CHAPTER UNDER WHICH CASE WAS PENDING WHEN DISMISSED	
NAME OF DISTRICT JUDGE	
NAME OF BANKRUPTCY JUDGE	JOHN J. GALGAY

CHECK IF: ☒ Voluntary ☐ Involuntary ☐ Fee paid in installments ☒ Corporation

OCCUPATION (Check one): ☐ Farmer ☐ Employee ☐ Professional ☐ Other (Non-business) ☐ Merchant ☒ Manufacturer ☐ Other (Business)

ADDRESS OF BANKRUPT/DEBTOR (Number and Street)

25 West 43rd St.

CITY	ZONE	COUNTY	STATE
NEW YORK		NEW YORK	N.Y.

	NAMES AND ADDRESSES
ATTORNEY FOR BANKRUPT OR DEBTOR	LEVIN & WEINTRAUB 225 B'way. New York, N.Y. 10007 962-3300
ATTORNEY FOR PETITIONING CREDITORS	
RECEIVER	
ATTORNEY FOR RECEIVER	
TRUSTEE	
ATTORNEY FOR TRUSTEE	

CHANGES OF PRINCIPALS

DATE	PROCEEDINGS
10/20/76	Filed Petition under chapter XI-322 proceedings, List of Creditors, Summary of Liabilities and Assets, Statement of Executory Contracts, Affidavit under Rule XI-2. Referred to Bkcy. Judge Galgay.
1/25/77	Filed Notice of Appeal to District court by PRECISION POLYMERS, INC. and PRECISION THERMO-PLASTICS CORP., from the order of Bkcy. Judge dated 1/5/77. Ret: 3/8/77 at 10:30 A.M. in room 506 f. (assigned to KNAPP, J.)
	(cont'd 2)

FORM BK 74-D
AUG. 1974

UNITED STATES DISTRICT COURTS

BANKRUPTCY DOCKET—COPY

☐ CHECK THIS BOX IF FILING FEES WERE PAID IN FULL AT THE TIME OF FILING

1/25/77	Filed Designation of Record and Statement of Issues Per Rule 806.f
2/3/77	Filed APPELLEES' Opposing Memorandum of Law. Sub. by. Krause, Hirsch & Gross. 41 E. 42nd St. N.Y. f.
3/23/77	Filed MEMORANDUM & ORDER, Accordingly, we dismiss the appeal as moot and remand the Bkcy. proceedings to Galgay, J. So ordered Knapp, J. dated 3/18/77. Copy sent to Bkcy. Judge.
3/25/77	Filed NOTICE OF APPEAL to USCA by Robintech, Inc. Shintech, Inc. and Plastiline, Inc. from the Memorandum & Decision granting Pltffs'.-Debtors' motion for summary Judgment; dismiss the Appeal herein as moot & remanding the Bkcy. proceedings to the Bkcy. Judge, ent...3/18/77. f.
04-19-77	Filed NOTICE OF APPEAL to the U.S.D.C. By Robintech Inc., Shintech Inc. and Plastiline Inc. from the Order of Judge Galgay dated 02-07-77. Ret. 05-31-77. (77 Civ. 1883)
04-19-77	Filed Designation of Contents of the Record on Appeal by Robintech Inc. et al.
4/25/77	Filed NOTICE of Original Record on Appeal has been Certified & Transmitted to USCA on 4/25/77.
04-26-77	Filed NOTICE OF APPEAL to the District Court by Robintech Inc., Shintech Inc. and Plastiline Inc. from the Findings of Fact, Conclusions of Law and Order of Bkcy. Judge dated 04-05-77. Ret. 05-03-77. (77 CIV. 2015)
04-26-77	Filed Designation of Contents of the Record on Appeal by Robintech Inc. et al dated 04-26-77. (77 CIV. 2015)
5/9/77	Filed True Copy of STIPULATION Dismissing Appeal on 3/25/77 without prejudice, without costs to either party, except that Defendants-Appellants shall pay whatever fees, if any, are due. So ordered Gurfein, J. of USCA Dated 5/3/77. Copy to Knapp, J. & Bkcy. Judge.
05-12-77	Filed NOTICE OF APPEAL to the District Court by Robintech, Inc., Shintech, Inc. and Plastiline, Inc. from the Order of Bkcy. Judge dated 01-12-77. Ret. 05-31-77. (77 Civ. 2334)
05-12-77	Filed Designation of Contents of the Record on Appeal by Robintech Inc. et al. from the Order dated 01-12-77 (77 Civ. 2334)
5/26/77	Filed ORDER TO SHOW CAUSE why an order extending time for the above applicants to file their brief in the above captioned matter should not be granted, & why it should not be adj. from its scheduled date of 5/31/77 until 6/14/77 etc. Ret: 5/27/77 at 10:30 PM in room 506. Owen, J. dated 5/26/77. f..

BEST COPY AVAILABLE

(cont'd Pg. 3)

DATE	PROCEEDINGS
5/27/77	Filed MEMO ENDORSED, Motion granted, their being no opposition. So ordered Owen, J. F..
5/27/77	Filed ORDER that the time for Appellees to file their brief, hereby is extended to 5:00 P.M. 6/13/77, that oral argument is adj. from 10:30 A.M. 5/31/77 to 6/14/77 at 10:30 A.M. Owen, J. dated 5/27/77 f.. (77 Civ 2334)
5/27/77	Filed BRIEF FOR Appeal from Order Designating Official Creditors' Committee. Sub. by Krause, Hirsch & Gross. f.. (77 Civ 2334)
05-27-77	Filed NOTICE OF APPEAL to the District Court by Robintech Inc., Shintech Inc. and Plastiline Inc. from the Order of Bkcy. Judge Galgay dated 04-13-77. Ret. 07-12-77 (77 Civ. 2666)
05-27-77	Filed Designation of Contents of the Record on Appeal by Robintech Inc. et al. (77 Civ. 2666)
6/10/77	Filed OPINION# 45998, Accordingly, we affirm Judge Galgay's approval of the settlement. We advise counsel that we are today signing the consent judgment in 76 Civ. 1746 which we were holding pending the disposition of this appeal. So Ordered Knapp, J. dated 6/6/77. m/n Copy to Bkcy. Judge
6/22/77	Filed NOTICE OF APPEAL To District Court by Robintech Inc., Shintech Inc. & Plastiline, Inc. from Order of Bkcy. Judge dated 5/5/77. Ret: 8/9/77 at 10:30 A.M. Room 506. f.. (77 Civ 3040)
6/22/77	Filed Designation of Contents of Record on Appeal & Statement of Issues, per Rule 806 (77 Civ 3040) f..
6/22/77	Filed NOTICE OF APPEAL to District Court by Robintech Inc., Shintech Inc. & Plastiline, Inc. from Order of Bkcy. Judge dated 6/2/77. Ret: 8/9/77 at 10:30 A.M. Room 506. f.. (77 Civ 3041)
6/22/77	Filed Designation of Contents of Record on Appeal & Statement of Issues, per Rule 806 (77 Civ 3041) f..
6/22/77	Filed ORDER TO SHOW CAUSE why an order should not be granted. Ret: 6/13/77 at 11 A.M. in Room 506. Brieant, J. dated 6/9/77.

(Cont'd Page 4)

6/22/77	Filed MEMO ENDORSED, the within motion has been disposed of by Stipulation & order signed this date. Brieant, J. dated 6/14/77. m/n
6/22/77	Filed STIP. & ORDER that the Appeal from the said Orders dated 4/13/77, 5/5/77, and 6/2/77, consolidated to be heard in the motion term of the USDC on 7/12/77 at 10:30 A.M Rm. 506. So ordered Brieant, J. dated 6/14/77. f.
6/22/77	Filed BRIEF OF APPELLANTS on consolidated Appeals from the Orders of the Bkcy. Court Dated 4/13/77, 5/5/77, & 6/2/77. Sub. by Krause Hirsch & Gross.
7/8/77	Filed NOTICE OF APPEAL by Robintech Inc., Shintech Inc. & Plastiline, Inc. to the USCA from the ORDER & OPINION of Judge Knapp, entered 6/10/77.
07-11-77	Filed transcript of record of proceedings dated 05-03-77. Filed in 76 Civ. 1746 WK
7/12/77	Filed transcript of record of proceedings dated 6/14/77
7/12/77	Filed MEMORANDUM & ORDER, all of the remaining undisposed of appeals in this matter for a hearing before the Part I Judge on Tuesday, 7/26/77, subject to further or different direction as the Judge then presiding may make. So ordered Brieant, J. dated 7/12/77. Copy to Bkcy. Judge.
7/19/77	Filed BRIEF OF Appellees on Consolidated Basis. Sub. by Levin & Weintraub. f..
7/25/77	Filed STIPULATION Withdrawing Bkcy. Appeal, from the Order of the Bkcy. Court entered in this case on 2/7/77 authorizing the Creditors' Committee to retain accountants should be & hereby is withdrawn. So Ordered Haight, J. dated 7/22/77. Copy to Bkcy. Judge. ([illegible])
8/3/77	Filed NOTICE OF ORIGINAL RECORD on Appeal has been certified & transmitted to USCA dated 8/3/77.

II

Order to Show Cause, dated November 24, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter
of
PRECISION POLYMERS, INC.,
PRECISION THERMOPLASTICS CORP.,
FLO-TITE PLASTICS CORP.,
Debtors

FILED
NOV 24 1976
JOHN J. GALGAY
Bankruptcy Judge

In Proceedings for an Arrangement

No. 76 B 2358
No. 76 B 2359
No: 76 B 2360

ORDER TO SHOW CAUSE

Upon the annexed application of ROBINTECH, INCORPORATED, SHINTECH, INCORPORATED and PLASTILINE, INC., creditors of the debtors herein, and no adverse interest being represented and due deliberation having been had thereon and good and sufficient reason appearing therefor, it is

ORDERED, that PRECISION POLYMERS, INC., PRECISION THERMOPLASTICS CORP. and FLO-TITE PLASTICS CORP., debtors herein, show cause at a hearing to be held before the Honorable John J. Galgay, Bankruptcy Judge, in Room 234, United States Courthouse, Foley Square, New York, New York on the 6th day of December, 1976, at 2:30 p.M., or as soon thereafter as counsel can be heard, why each of the above entitled cases should not be dismissed, or in the alternative, transferred to a proper district, because of improper venue, and why the applicants herein should not have such other and further relief as is just, including all costs and expenses incurred in connection with the within motion, and it is further

ORDERED, that pending the hearing and determination of the within motion, only the election of a stand-by trustee and the election of a creditors' committee as provided for in Bankruptcy

Rule 11-25(a)(2) at the first meeting of creditors set for November 30, 1976 at 10:00 A.M. be and the same hereby is stayed and that all other business at said first meeting of creditors, including the examination of the debtor shall proceed; and it is further

ORDERED, that service by mail of a copy of this order and the application upon which it is granted, upon Levin & Weintraub, attorneys for the debtors, 225 Broadway, New York, New York 10007, and Benenson & McLaughlin, 744 Broad Street, Newark, New Jersey, attorneys for the unofficial creditors' committee herein, on or before November 24, 1976, shall be deemed good and sufficient service; and it is further

ORDERED, that any party or other person wishing to be heard in opposition to the within motion, and submitting any papers in opposition thereto, shall serve such papers upon Krause, Hirsch & Gross, attorneys for the applicants herein, at 41 East 42nd Street, New York, New York 10017, not less than two ~~three~~ full business days before the date hereinabovefixed for the hearing of the within motion and file same with Judge Galgay on or before 12/3/76

Dated: New York, New York
November 24, 1976

/s/ Roy Babitt
Bankruptcy Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of	In Proceedings for an Arrangement
PRECISION POLYMERS, INC. PRECISION THERMOPLASTICS CORP., FLO-TITE PLASTICS CORP.,	No. 76 B 2358 No. 76 B 2359 No. 76 B 2360
Debtors.	APPLICATION

TO THE HONORABLE JOHN J. GALGAY, Bankruptcy Judge:

The application of ROBINTECH, INCORPORATED, SHINTECH, INCORPORATED and PLASTLINE, INC., creditors of the above referenced debtors, by KRAUSE, HIRSCH & GROSS, their attorneys, respectfully represents:

I. CURRENT STATUS OF EACH CASE

1. On October 20, 1976 each of the above named debtors filed a petition for relief under Chapter XI of the Bankruptcy Act in the United States District Court for the Southern District of New York.

2. Pursuant to orders made and entered in each of the said cases on October 21, 1976, each debtor was continued in possession of its property and authorized to operate its respective business as a debtor-in-possession. On the same day, an order was made and entered providing for joint administration of all three cases.

3. The first meeting of creditors in each case is scheduled to be held at 10:00 A.M. on Tuesday, November 30, 1976, for the transaction of such business as is provided for in Bankruptcy Rule 11-25(a)(2).

II. STATUS OF APPLICANTS

4. Robintech, Incorporated is an unsecured creditor of Precision Polymers, Inc. in the sum of $33,432.00. On November 19, 1976 it filed its proof of claim in case No. 76 B 2358 in that amount.

5. Shintech, Incorporated is an unsecured creditor of Precision Polymers, Inc. in the sum of $152,726.58. On November 19, 1976 it filed its proof of claim in case No. 76 B 2358 in that amount.

6. Plastiline, Inc. is an unsecured creditor of Precision Polymers, Inc. in the sum of $8,861.88. Plastiline, Inc. is also an unsecured creditor of Precision Thermoplastics Corp. in the sum of $130.72.

III. APPLICABLE VENUE PROVISIONS

7. (a) Bankruptcy Rule 116(a)(2) provides in pertinent part:

> "A petition by or against a corporation * * * may be filed in the district (A) where the bankrupt has had its principal place of business or its principal assets for the preceding 6 months or for a longer portion thereof than in any other district * * *".

Bankruptcy Rule 116(a)(2), which supersedes the venue provisions of Section 2a(1) of the Bakruptcy Act, is made applicable to Chapter XI cases by Bankruptcy Rule 11-13(a)(1).

(b) Bankruptcy Rule 11-13(a)(3) provides:

> "Notwithstanding the foregoing, a petition commencing a Chapter XI case may be filed by an affiliate of a debtor or bankrupt in a district where a petition under the Act by or against the debtor or bankrupt is pending."

"Affiliate" is defined in Bankruptcy Rule 901(3). This definition of "affiliate" is made applicable to Chapter XI cases by Bankruptcy Rule 11-63.

(c) Bankruptcy Rule 116(b)(2) provides:

> "When Venue Improper. If a petition is filed in a wrong district, the court may, after hearing on notice to the petitioner or petitioners and such other persons as it may direct, dismiss the case or, in the interest of justice and for the convenience of the parties, retain the case or transfer it to any other district. Such an order may be made at or before the first meeting of creditors either on the court's own initiative or on motion of a party in interest but thereafter only on a timely motion. Notwithstanding the foregoing, the court may without a hearing retain a case filed in a wrong district if no objection is raised."

Bankruptcy Rule 116(b)(2) is made applicable to Chapter XI cases by Bankruptcy Rule 11-13(b).

IV. THE PRECISION POLYMERS, INC. CASE

8. The original petition under Chapter XI filed by Precision Polymers, Inc. contains the following allegations:

> "1. Petitioner's post office address is 25 West 43rd Street, New York, New York 10036.
>
> 2. Petitioner has had its principal place of business within this district for the preceding six months."

9. The executive offices of the debtor, Precision Polymers, Inc., a Delaware corporation, are located at 1136 Route 22, Mountainside, New Jersey. (See cover page of Form 8-K filed October 28, 1976 with the Securities and Exchange Commission, which form is annexed hereto, made a part hereof and marked Exhibit 1; see second page of Annual Report of 1975 (pages of this report are not numbered) filed on June 1, 1976 with the Securities and Exchange Commission, which report is annexed hereto, made a part hereof and marked Exhibit 2; see cover page of Form 10-Q filed on May 27,1976 with

the Securities and Exchange Commission, which form is annexed hereto, made a part hereof and marked Exhibit 3; see cover page of Form 10-Q filed on August 13, 1976 with the Securities and Exchange Commission, which form is annexed hereto, made a part hereof and marked Exhibit 4; and see cover page of Form 10-K filed on March 30, 1976 with the Securities and Exchange Commission, which page is annexed hereto, made a part hereof and marked Exhibit 5.)

10. In its 1975 Annual Report, under the heading "Description of Business" and under the further subhead of "Products", it is stated:

> "Originally operated with two production lines in a 1500 square foot facility in 1967, PPI operated at the close of 1975 six (6) facilities occupying 235,000 square feet of space with a total pipe capacity of 91,000,000 pounds per year.
>
> "PPI factories and four (4) strategically located warehouses enable the company to service most major U.S. population centers, and give the company a truly national character."

Precision Polymers, Inc. has not heretofore and does not at the present time operate any factories or warehouses in the Southern District of New York or for that matter in any of the states or districts which comprise the Second Circuit.

At pages 6 and 7 of its Form 10-K filed with the Securities and Exchange Commission on March 30, 1976, the following statements are made by the debtor, Precision Polymers, Inc.:

> "Properties.
>
> "The Registrant occupies an aggregate of approximately 235,000 square feet of space for

its executive, sales and administrative offices as well as manufacturing and warehousing operations. Of this amount, approximately 44 percent is leased and 56 percent is owned. The following table summarizes the principal information for each location:

Location	Tenant	Expiration Date	Area in Sq. Ft.
Mountainside, New Jersey	Precision Polymers, Inc. Executive Offices	3/31/93	12,000
Carlotte, North Carolina	Precision ThermoPlastics Corp. Executive/Manufacturing	Owned	110,000
Los Angeles, California	Precision ThermoPlastics Corp. Manufacturing	Month to Month	16,000
Memphis, Tennessee	Precision ThermoPlastics Corp. Manufacturing	11/30/76	56,000
Houston, Texas	Precision ThermoPlastics Corp. Manufacturing	2/15/77	19,400
Temple, Texas	Derbi Plastics, Inc.	Owned	21,600"

11. The debtor, Precision Polymers, Inc., does not now have nor has at any time heretofore had, its principal place of business or its principal assets in the Southern District of New York or in any of the states or districts comprising the Second Circuit. By reason of the foregoing, the venue of the within Chapter XI case of Precision Polymers, Inc. in the Southern District of New York is improper.

V. THE PRECISION THERMOPLASTICS CORP. CASE

12. The original petition under Chapter XI filed by Precision Thermoplastics Corp. contains the following allegations:

> "1. Petitioner's post office address is 25 West 43rd St., New York, New York 10036.

2. Petitioner has had its principal place of business within this district for the preceding six months."

13. The principal executive offices of the debtor, Precision Thermoplastics Corp., a Delaware corporation, are located at 1136 Route 22, Mountainside, New Jersey, at the executive offices of said debtor's parent, Precision Polymers, Inc. The debtor Precision Thermoplastics Corp. also maintains other executive offices at Charlotte, North Carolina, as stated at page 6 of a Form 10-K filed with the Securities and Exchange Commission on March 30, 1976 by said debtor's parent. The debtor, Precision Thermoplastics Corp. also is a sub-lessee of premises 17462 Carmen Avenue, Irvine, California (see Exhibit 1).

14. At pages 6 and 7 of a Form 10-K filed with the Securities and Exchange Commission on March 30, 1976 by Precision Polymers, Inc., the debtor parent of the debtor Precision Thermoplastics Corp., it is reported that Precision Thermoplastics Corp's. manufacturing facilities are located as follows:

"Location	Tenant	Expiration Date	Area in Sq. Ft.
Charlotte, North Carolina	Precision Thermoplastics Corp. Executive/Manufacturing	Owned	110,000
Los Angeles, California	Precision Thermoplastics Corp. Manufacturing	Month to Month	16,000
Memphis, Tennessee	Precision Thermoplastics Corp. Manufacturing	11/30/76	56,000
Houston, Texas	Precision Thermoplastics Corp. Manufacturing	2/15/77	19,400"

15. The debtor, Precision Thermoplastics Corp., does not now have nor has at any time heretofore had, its principal place of business or its principal assets in the Southern District of New York or in any of the states or districts comprising the Second Circuit. By reason of the foregoing, the venue of the within Chapter XI case of Precision Thermoplastics Corp. in the Southern District of New York is improper.

VI. THE FLO-TITE PLASTICS CORP. CASE

16. The original petition under Chapter XI filed by Flo-Tite Plastics Corp. contains the following allegations:

> "1. Petitioner's post office address is 25 West 43rd St., New York, New York 10036
>
> "2. Petitioner has had its principal place of business within this district for the preceding six months."

17. Flo-Tite Plastics Corp. is a wholly-owned subsidiary of Derbi Plastics, Inc., which is located in Temple, Texas and in turn is a wholly-owned subsidiary of the debtor, Precision Polymers, Inc. Flo-Tite Plastics Corp. is a Delaware corporation, located in Tustin, California (see Exhibit 2 annexed hereto and Exhibit A annexed to the Chapter XI petition filed by Precision Polymers, Inc.). On information and belief, the executive offices of the debtor, Flo-Tite Plastics Corp. are located at the Tustin, California facility.

18. The debtor, Flo-Tite Plastics Corp., does not now have nor has at any time heretofore had, its principal place of business or its principal assets in the Southern District of New York or in any of the states or districts comprising the Second Circuit. By reason of the foregoing, the venue of the within Chapter XI case of Flo-Tite Plastics Corp. in the Southern District of New York is improper.

VII. THE CHAPTER XI PETITIONS HEREIN WERE KNOWINGLY, FALSELY AND IN BAD FAITH FILED IN THE WRONG DISTRICT, AND SHOULD BE DISMISSED.

19. As set forth in paragraph 8, 12 and 16, each of the debtors alleged that its post office address is 25 West 43rd Street, New York, New York. Each of the debtors acted through Marvin A. Rosenblum, who verified each petition as President. Each petition was also signed by Harris Levin, a partner of the firm of Levin & Weintraub, attorneys for each of the debtors.

20. An investigation of and visit to premises 25 West 43rd Street, New York, New York on November 16, 1976 disclosed the following facts:

a) All three debtors were then listed on the building directory as being located in Room 814, which room also is listed on the building directory as the office of Bernard Rackear, who is general counsel for all of the debtors.

b) The listing of each of the debtors on the aforementioned building directory was in the form of an embossed plastic tape. Names of other tenants, including Bernard Rackear, appeared on solid, printed plastic name plates.

c) The lobby attendant of the building stated that embossed plastic tape entries on the building directory, above described, indicate temporary listings for tenants listed within the previous "couple of weeks".

d) The door of Room 814 bore the name Bernard Rackear and no other name.

21. An examination of the current Manhattan Telephone

14

Directory reveals no listing whatsoever for the debtors, Precision Thermoplastics Corp. and Flo-Tite Plastics Corp. An examination of the current Manhattan Telephone Directory for the debtor, Precision Polymers, Inc., discloses the following entry:

> "Precision Polymers headquarters
> 1136 USHwy #22
> Mountainside NJ NYCTelNo- 349-3081
>
> Precision Polymers, Inc.
> GreenPondRdRockaway NJ -201 627-8520"

Current inquiry of the New York City Information Operator reveals that there has been no change in the foregoing facts for any of the debtors herein.

22. It is evident from the foregoing that each of the debtors has recently contrived and fabricated an address in the Southern District of New York for the purpose of filing an improper Chapter XI petition here in the Southern District of New York.

23. As set forth in paragraphs 8, 12 and 16 herein, each of the debtors alleged that it has had its principal place of business within this district for the preceding six months. As hereinabove stated, each of the debtors in making this allegation acted through Marvin A. Rosenblum, who verified each petition as President. Each petition was also signed by Harris Levin, a partner of the firm of Levin & Weintraub, attorneys for each of the debtors.

24. That such allegations were made knowingly, falsely and in bad faith is established not only by the facts hereinabove set forth but by admissions made under oath by the debtors in affidavits submitted in connection with a lawsuit currently pending in the United States District Court for the Southern District of New York bearing the caption "PRECISION POLYMERS, INC. and PRECISION THERMOPLASTICS CORP., Plaintiffs, against ROBINTECH INCORPORATED, SHINTECH INCORPORATED and PLASTILINE, INC.,

Defendants, 76 Civ. 1746 (WK)".

The facts with respect to such admissions are as follows:

a) In an affidavit filed on behalf of debtors, Precision Polymers, Inc. and Precision Thermoplastics, Corp., in opposition to a motion to transfer the proceedings to a district court in Texas, paragraph 13 thereof stated:

> "Plaintiffs' (i.e.: within debtors) headquarters are located in Mountainside, New Jersey,.... While the plaintiffs have manufacturing facilities in four states, their Mountainside headquarters is the nerve center of plaintiffs' activities. Mountainside is the site where plaitiffs maintain their records from recent years. The most important officers and employees of plaintiffs have their offices out in Mountainside and reside in the vicinity. The employees of plaintiffs who are charged with responsibility for national sales are located in Mountainside...."

b) In a memorandum in support of the aforesaid affidavit in opposition, the following appeared at page 3 thereof:

> "... plaintiffs' (i.e.: within debtors) headquarters are in Mountainside, New Jersey. .... While the plaintiffs have manufacturing plants in four states, the Mountainside headquarters is the nerve center of plaintiffs' activities, the site where their records of recent years are maintained, and the place where its most important officers and employees maintain their offices. The employees of plaintiffs who are charged with responsibility for national sales are located in Mountainside."

25. Reference has hereinabove been made to a suit pending in the Southern District of New York, wherein the debtors, Precision Polymers, Inc. and Precision Thermoplastics Corp. are the plaintiffs, and the applicants herein are the defendants. A motion was made in the said action by applicants herein to transfer that action to a District Court in Texas on the ground of improper venue.

The Chapter XI filings in this District constitute an attempt by the debtors herein to overcome the infirmity of their position in connection with that motion, and constitute further evidence of bad faith on their part in filing the Chapter XI petitions in the wrong District. Immediately after filing the petitions in these Chapter XI proceedings, Bernard Rackear, one of the attorneys for the plaintiffs in that suit, wrote a letter to the Honorable Whitman Knapp, the District Judge before whom the case is pending, urging as an additional reason for his retention of the case, the fact that the debtors had filed Chapter XI petitions in the Southern District. This is a thinly veiled attempt to bootstrap the debtors' position before Judge Knapp in opposition to the transfer motion. At the same time, it is to be expected that the debtors will attempt to use the pendency of the suit before Judge Knapp as an argument in opposing the present motion before this Court. Judge Knapp has not yet decided the motion for transfer. On being advised that applicants herein would seek a dismissal or transfer of these Chapter XI cases, Judge Knapp indicated that he would await the results of such a motion before the Bankruptcy Judge.

26. Although Bankruptcy Rule 116(b)(2) provides that if a petition is filed in a wrong District, the Court may dismiss the case or, in the interest of justice and for the convenience of the parties, retain the case or transfer it to any other District, the Advisory Committee note to Rule 116(b) states that where the choice of the wrong venue appears deliberate and "smacks of harrassment or evidences some other element of bad faith on the petitioner's part", the proceedings should be dismissed. Such are the circumstances in the instant case and dismissal of these Chapter XI cases is the appropriate remedy to be granted herein.

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VIII. AS AN ALTERNATIVE TO DISMISSAL, THE CASES SHOULD BE TRANSFERRED TO A DISTRICT OF PROPER VENUE.

27. Rule 116(b)(2) provides that when, as in the instant case, venue is improper, the Court may dismiss the case or, in the interest of justice and for the convenience of the parties, retain the case or transfer it to any other district. Should the Court in its discretion determine not to dismiss, then the interest of justice and the convenience of the parties dictate that the cases be transferred to another district.

28. The term "in the interest of justice" is not defined by the Bankruptcy Rules. Certainly a factor to be considered in that regard is the unnecessary burden the retention of these cases would impose upon this Court and the imposition upon parties who are properly before it. Statistics published by the Administrative Office of the United States Court in Washington, D.C., in "TABLES OF BANKRUPTCY STATISTICS" (prepared in accordance with Section 53 of the Bankruptcy Act) for the fiscal years ending June 30, 1974, 1975 and 1976 disclose that while Chapter XI filings throughout the United States declined by 7.7% in fiscal 1976, they remained constant in the District of New Jersey (125 filings in 1975 and 125 again in 1976), but increased in the Southern District of New York (268 filings in 1975, 289 filings in 1976).

29. For the debtors to knowingly, falsely and in bad faith bring these cases in the Southern District of New York, is to unduly burden an already overworked court and to hamper the speedy and efficient administration of bankruptcy proceedings properly filed within this District -- all to achieve the ulterior objective of these debtors. The iniquity of what has been done by the debtors could not be better demonstrated than by the necessity to bring on the within motion and for the court to expend its time and

energy to hear and determine this motion. Such imposition is not only upon the Bankruptcy court, but also upon the District court and the Court of Appeals to the extent that appeals are taken. Thus the burden of each tier of the courts in this Circuit is added to. The administrative detail imposed on the supporting clerical staff of the respective courts is also unnecessarily burdened.

30. The failure of interested parties to make appropriate motions in circumstances such as are present in instant case, has only encouraged the kind of abuse we are witnessing in the instant case. This Court should make it clear that it will not countenance such abuse.

31. The term "in the convenience of the parties" is not defined by the Bankruptcy Rules. Certainly a factor to be considered in that regard is the proximity of the creditors to the Court. A list of the creditors annexed to petition of the debtors, Precision Polymers, Inc. and Precision Thermoplastics Corp., which lists are identical, reflect approximately 473 unsecured creditors of whom only 69 are located in the State of New York, with the balance distributed roughly as follows:

89 in the State of North Carolina*

71 in the State of New Jersey

40 in the State of Texas*

33 in the State of Tennessee*

23 in the State of California*

the remaining creditors are distributed among 32 other states.

A list of creditors, annexed to the petition of Flo-Tite Plastics Corp., reveals that there are nine (9) unsecured

---

* assets of the debtors, consisting of manufacturing and warehousing facilities, raw materials and inventory, are located in North Carolina, Texas, Tennessee and California.

creditors (to whom it owes approximately $249,136.00); seven (7) of which are located in Southern California, with the remaining two (2) located in Texas.

32. It is impossible at this time to determine the amounts due and owing to each of the creditors since the debtors have failed to file complete schedules and have obtained an order of the Court extending the time to file schedules to December 3, 1976, a date three days after the date set for the First Meeting of Creditors.

33. Clearly the convenience of the creditors, as well as other parties, would be served if these proceedings were transferred to the District in which the principal place of business, the records and the executive employees of the debtors are, in fact, located.

34. An unofficial committee of creditors has been formed and is represented by New Jersey counsel: Benenson & McLaughlin, 744 Broad Street, Newark, New Jersey.

WHEREFORE, applicants pray for the annexed order, for which no previous application has been made.

Dated: New York, New York
November 24, 1976

KRAUSE, HIRSCH & GROSS
Attorneys for Applicants

By: ______________________
Jack Gross, A Partner

41 East 42nd Street
New York, New York 10017
Tel: (212) 986-1122

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OCT 28 1976

FORM 8-K

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

CURRENT REPORT

Pursuant to Section 13 or 15(d) of
The Securities Exchange Act of 1934
For the Month of October, 1976

PRECISION POLYMERS, INC.
(Exact name of Registrant as specified in charter)

1136 Route 22, Mountainside, New Jersey 07092
(Address of principal executive offices)

Item 3 - Legal Proceedings

On October 20, 1976 the registrant filed a Petition for Arrangement under Chapter XI of the Bankruptcy Act in the United States District Court for the Southern District of New York. The proceeding bears File No. 76 B 2358.

On the same date and in the same court, both Precision Thermoplastics Corp., a Delaware corporation which is a wholly-owned subsidiary of registrant, and Flo-Tite Plastics Corp., a Delaware corporation which is a wholly-owned subsidiary of registrant's wholly-owned subsidiary Derbi Plastics, Inc., also filed separate Petitions for Arrangement under Chapter XI of the Bankruptcy Act in the United States District Court for the Southern District of New York. The proceedings bear file number 76 B 2359 and 76 B 2360 respectively.

On September 24, 1976 Brandt-Jordan Corporation, a Massachusetts corporation, commenced an action in the Superior Court of the Commonwealth of Massachusetts for the County of Plymouth (Civil Action CA-763973) against registrant and 10 other corporate defendants, including engineers, other pipe manufacturers and distributors, seeking $5,000,000 together with interest and costs, as damages allegedly arising out of the design and construction of the United States Postal Service Bulk Mail Center (Phase III) at Springfield, Massachusetts. This litigation and the related litigation in the two succeeding paragraphs have been referred for defense to registrant's product liability insurance carrier.

On September 24, 1976 Noyes Insulation Contracting, Inc., a Massachusetts corporation, commenced an action in the Superior Court of the Commonwealth of Massachusetts for the County of Norfolk (Civil Action CA-119522) against registrant and eleven other corporate defendants, including engineers, other pipe manufacturers and distributors, seeking $188,000 together with interest and costs, as damages allegedly arising out of the design and construction of the United States Postal Service Bulk Mail Center (Phase III) at Springfield, Massachusetts.

On September 28, 1976 Brandt-Jordan Corporation, a Massachusetts corporation, commenced an action in the United States District Court for the District of Massachusetts (Civil Action No. 76-3476-F) against registrant and six other corporate defendants including engineers, other pipe manufacturers and distributors seeking $5,000,000 together with interest and costs, as damages allegedly arising out of the design and construction of the United States Postal Service Bulk Mail Center (Phase III) at Springfield, Massachusetts.

Item 13 - Other Materially Important Events

Precision Thermoplastics Corp. ("PTC"), a wholly-owned subsidiary of registrant and sublessee of 17462 Von Karmen Avenue, Irvine, California, failed to make payment when due of the rent for said premises for September, 1976. Accordingly, on September 29, 1976,

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its landlord, TFI Companies Incorporated, served a summons and complaint in unlawful detainer seeking seeking possession of the premises, treble damages and costs and attorney's fees. PTC thereafter paid the September rent; the October rent is presently due and unpaid.

On September 22, 1976 registrant entered into an agreement with Exeter Management Corporation ("Exeter") of 52 Church Street, Boston, Massachusetts under which Exeter undertook to serve as management consultant to registrant and to use its best efforts to raise capital and financing acceptable to registrant. If such financing is obtained, registrant has agreed to issue to Exeter 100,000 shares of registrant's voting common stock, said stock to be fully paid, non-assessable. Exeter was also engaged on said date for 50 weeks to provide specified managment consulting services at $2,000 a week.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

DATED: October 21, 1976.

PRECISION POLYMERS, INC.
(Registrant)

By: ______________________
Marvin A. Rosenblum,
President

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ANNUAL REPORT 1975

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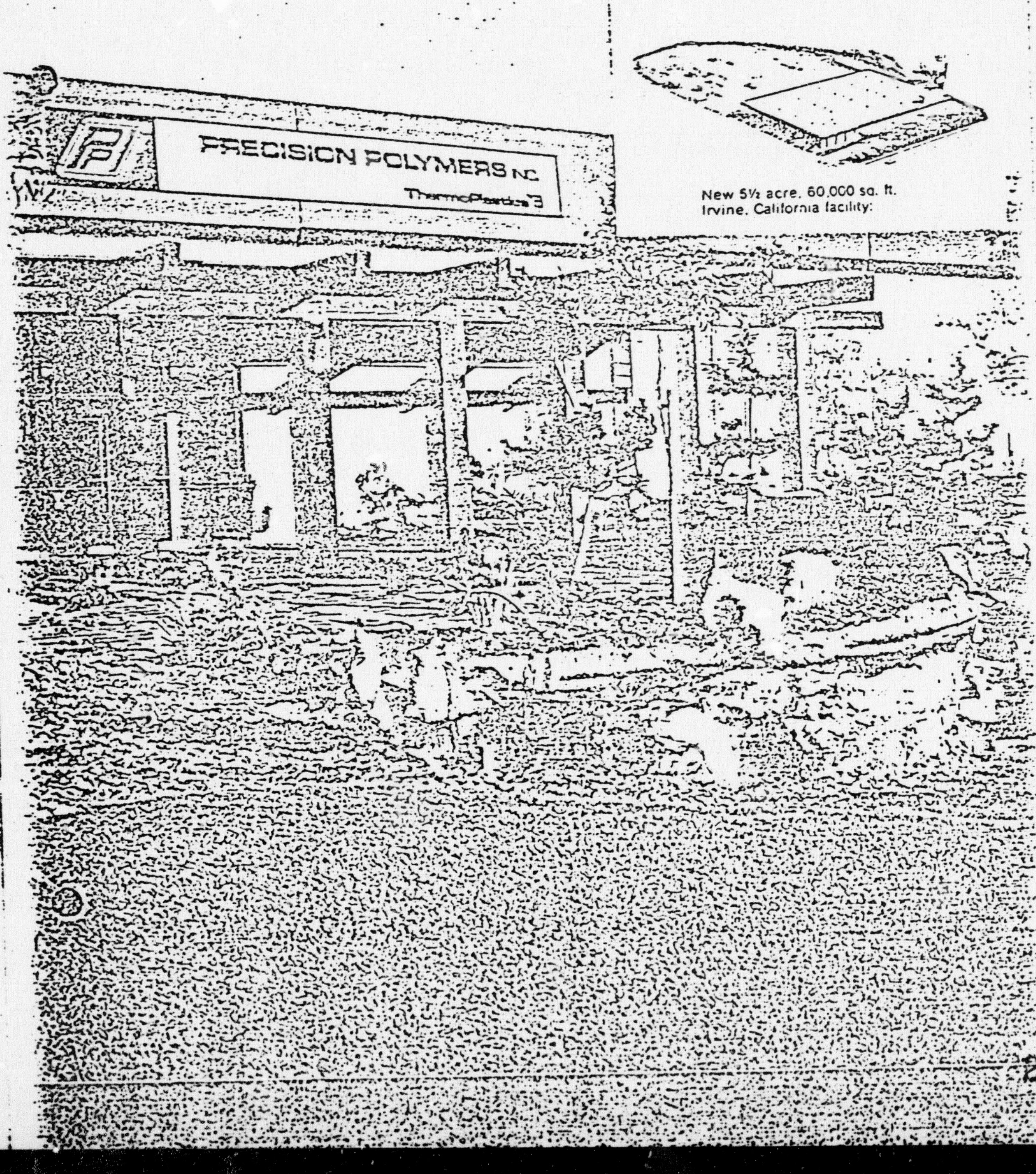
PRECISION POLYMERS INC
ThermoPlastics 3

New 5½ acre, 60,000 sq. ft.
Irvine, California facility:

OFFICERS PRECISION POLYMERS, INC.
Marvin A. Rosenblum,
President, Chief Executive Officer
William Malia,
Senior Vice President/Finance
Michael F. Byrne,
Vice President/Special Projects
and Assistant to the President
Salvatore A. Cicero,
Vice President/Materials
Management
Gerald E. Roche,
Vice President/National Sales
Administrator
William Thiele,
Vice President/Manufacturing-
Engineering
Jesse Taub,
Secretary-Treasurer

DIRECTORS
Marvin A. Rosenblum,
Chairman of the Board
Jack Stillman,
Vice President-Finance,
Consolidated Cigar Corporation
Jesse Taub,
Vice President,
Shaheen Natural Resources

PRECISION POLYMERS, INC.,
SUBSIDIARIES
Precision ThermoPlastics Corp.
Derbi Plastics, Inc.
Hatduct, Inc.
PPI Realty Corp.

EXECUTIVE OFFICES
1136 Route 22
Mountainside, New Jersey 07092

STOCK TRANSFER AGENT
American Stock Transfer Company
15 William Street
New York, New York 10005

GENERAL COUNSEL
Bernard Rackear Professional
Corporation
25 West 43rd Street
New York, New York 10036

AUDITORS
J.K. Lasser & Company
656 Fifth Avenue
New York, New York 10019

BOSTON STOCK EXCHANGE
Symbol PYM

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PRECISION POLYMERS, INC. AND SUBSIDIARIES

Marvin A. Rosenblum,
President

Dear Stockholder:

PPI's operations during 1975 correlated closely with the depressed national and international economic conditions.

Net income for the year was $193,965 or 16 cents per share on revenues of $15,666,307, compared with net income of $1,235,115 or 95 cents per share (including $537,000 or 45 cents per share arising from a tax benefit) on revenues of $18,589,263 in 1974.

The declining revenues and earnings were caused by two factors, both by-products of the nation's economy:

Resale prices of pipe, valves, fittings, cement, and other related products dropped sharply in an extremely competitive environment, and

the decline in national residential, commerical and industrial construction produced an inventory oversupply, and severely lessened the demand for your Company's products.

Despite those pressures outside its control, management intensified its efforts to properly posture your Company to take advantage of an improved economic forecast and anticipated increased demand in 1976:

- In June, 1975, Derbi Plastic, Inc., Temple, Texas, PPI's wholly-owned subsidiary, completed the purchase of the assets of Flo-Tite Plastics, Inc., Tustin, California, a PVC gate valve manufacturer. Subsequently, patent no. 3,938,779 was issued to Flo-Tite for its non-corrosive PVC or polypropylene gate valve. We are now selling this product in competition with conventional materials, and feel that its market and potential are almost inexhaustible.

Our Thermoline-PB™ engineered pipe program was launched. Your Company can produce large diameter (up to 18") polybutylene pipe from high molecular weight polybutylene material for industrial, mining, and municipal applications, and is the country's exclusive source of molded polybutylene fittings (up to 8" diameter).

During September 1975, the Company completed a financing package wherein its current merchant banker, Commerical Trading Co., Inc., and Midlantic National Bank, New Jersey, are participating in a combined credit line of $4,000,000 on accounts receivable, inventories, and a term-loan.

As part of a continuing retrenchment, consolidation, and efficiency improvement policy, your Company initiated a unique organizational structure within the Sales and Marketing Departments which significiantly improved communications and introduced an esprit de corps that is unparallelled in our corporate history.

Most of our approximately 3,000 customers, using business planning similar to ours, operating with minimal and reduced inventories in 1975, were reluctant to commit for 1976. On January 16, 1976, the Wall Street Journal carried an article that partially was entitled "PVC Pipe Price Boosts . . ." that resulted from our announcement increasing prices on "PVC pipe and fittings by 10%, effective February 1, and probably an additional 6 to 8% within the next 60 days." Our second increase has been announced. Customers have been notified that, effective May 15th, the net price for PVC pipe and fittings will be selectively increased by an average of 8%. Despite these increases, our backlog continues to grow and the demand for our product line, one of the most complete in the industry, is firming.

During the first quarter of 1976, the decision was made to purchase certain assets from Ralon Products, Inc., Irvine, California, a subsidiary of TFI Companies, Incorporated, including 7 extruders and 2 molding presses, and to consolidate our 16,000 square foot, 3-production line, Vernon, California plant into the physical facilities that were being occupied by Ralon. The new leased facility is 60,000 square feet on 5½ acres of land, primarily paved, and can be fully utilized for outside storage. It is anticipated that these facilities will add significantly to sales and profits.

Management has felt for many years that, because of the capital investment required, it was not economically feasible for your Company to enter into the manufacture of drain, waste, and vent fittings. These fittings, considered a commodity product, are used primarily for residential construction and represent a significant percentage of the plastics fittings industry. During first quarter 1976, PPI announced an Agreement in Principle to acquire assets in the form of molds used for the manufacture of these fittings from The Central Foundry Company. The molds are designed using the industry's latest technology and can produce a competitive product. A corporate objective to become a complete line manufacturer of pipe, valves, fittings and cement on a national basis has now been achieved.

Management is looking forward to a brighter future and will always be grateful to our shareholders, for their understanding; to our employees, for their loyalty and dedication; and to our customers and suppliers, without whom we cannot do business, and with whom daily contact is most pleasurable.

Sincerely,

Marvin A. Rosenblum,
President
May 3, 1976.

DESCRIPTION OF BUSINESS

Products

PRECISION POLYMERS, INC. (PPI) and its subsidiaries are primarily engaged in the manufacture and sale of polyvinyl chloride (PVC) rigid plastic pipe and fittings, polybutylene (PB) flexible plastic pipe and chlorinated polyvinyl chloride (CPVC) pipe and fittings, and polyethylene (PE) flexible pipe. PPI also manufactures and sells thermoplastic ball, gate, check, Y-Globe valves, sediment strainers and cement.

Originally operated with two production lines in a 1500 square foot facility in 1967. PPI operated at the close of 1975 six (6) facilities occupying 235,000 square feet of space with a total pipe capacity of 91,000,000 pounds per year.

PPI factories and four (4) strategically located warehouses enable the company to service most major U.S. population centers, and give the company a truly national character.

Marketing and Sales

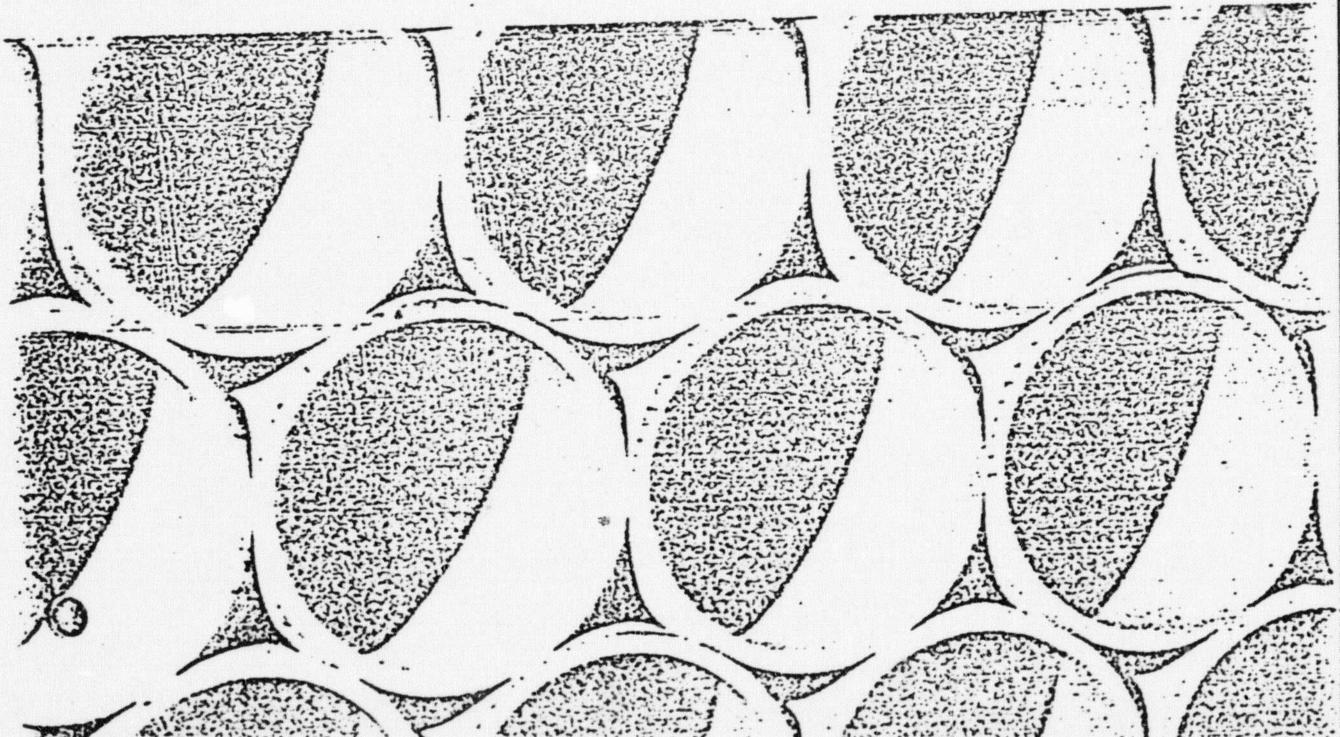
In 1975 PPI concentrated on increasing penetration of the industrial pipe and fittings marketplace. New, specialized representatives were added to the company's group of 36 manufacturer's representatives and/or independent sales agencies, who in turn employ their own salespeople. PPI also has an internal sales force of ten (10) employees.

It should be noted that in the past PPI's products had been primarily used in new home construction, water systems, communications and electrical duct and general applications. This subjected the company's sales to cyclical and seasonal nature of private home, institutional and commercial building construction. The shift to emphasis on the industrial market is expected to reduce the seasonal character of PPI's business.

Special emphasis of further diversification of sales in taking place with efforts tailored especially to the swimming pool, commerical irrigation, municipal water supply and sewer main construction, consumer hardware, building materials, farm coop and O.E.M. markets.

Continuing evidence of PPI's capability to serve these new markets is the researching of pipe products new to this country; i.e. large diameter spiral wound polyethylene pipe, dual extruded drip irrigation pipe and corrugated PVC drainage tube. PPI is also constantly improving injection molding and extrusion technology to produce large diameter pipe and fittings from polybutylene and chlorinated polyvinyl chloride, products of special interest to the industrial marketplace.

At present Precision services approximately 3000 active customers, with no one customer representing more than 2% of the company's sales volume. Sixty-one per cent of Precision's total sales were to the Industrial Pipe and Fittings customers while the balance was spread between Plumbing, Municipal, Hardware, and other non-industrial customers. Plastic pipe accounted for 71.9 per cent of PRECISION's sales to these customers.



Backlog

During 1975 PRECISION was serving distributors who were purchasing their reduced requirements on a month-by-month basis. This prevented PRECISION from maintaining a substantial backlog. As inventories were reduced by cautious distributors to the private home, institutional and commercial industries, sales to these markets slowed.

In order to lessen the affects of the cyclical and seasonal nature of these markets. PRECISION is emphasizing penetration of the industrial and hardware markets. In 1975 the company was able to ship all business booked, with equipment running at 25% of capacity for pipe. This represents an increase over 1974 when substantial raw material shortages adversely affected production.

Competition

The plastic pipe and fittings business continues to be highly competitive and PRECISION competes with numerous manufacturers in the sale of its products. most of whom are small and offer a limited line of commodity - oriented products. Sixteen firms account for more than 50% .of total industry shipments and represent competition within the national market. Six of these competitors have sales in excess of PRECISION's. while five are approximately the same size. However. PRECISION's extensive horizontal product mix enables it to offer its customers one of the broadest selections of products available in the industry from one source. PRECISION believes that it continues to rank second in the industrial market.

Sources and Availability of Raw Materials

PRECISION purchases its raw materials from five major suppliers. three of which are under contract. During 1975 there was an adequate supply of raw materials for the industry. especially in view of the reduced demand for product created by the downturn in the new construction industry.

PRECISION has several long term arrangements with key suppliers of raw materials and while there appears to be some tightening in supplies due to compliance with regulatory agency requirements. no critical shortage is anticipated. However. there have been announced increases in the cost of raw materials. which will be reflected in increased prices for finished products. as industry conditions permit.

Patents

PRECISION'S wholly owned subsidiary FLO-TITE PLASTICS. Inc. has been awarded patent protection on some of the features of its unique gate valve. In addition PRECISION licenses from 2 European Sources technology for the manufacture of end bell gasket. including it's exclusive E-Z SEAL™ joint.

Environmental Controls

Reports of recent studies have disclosed a high incidence of cancer among workers exposed to vinyl chloride monomer. which is used in the manufacture of polyvinyl chloride resin. a raw material purchased by PRECISION. On October 4. 1974. the Department of Labor published a new permanent standard setting limits of exposure of workers to unpolymerized vinyl chloride. The United States Circuit Court of Appeals. on April 1. 1975. refused to delay the implementation of Federal standards that would result in the reduction in worker's exposure to vinyl chloride gas. The industry is complying with the ruling.

PRECISION does not manufacture polyvinyl chloride resin and preliminary monitoring indicates that its extrusion plants. as processors of PVC compounds meet the standards.

Employees

PRECISION employs approximately 255 persons. including 11 executives. 45 office and accounting. 19 sales and 180 production and warehousing employees.

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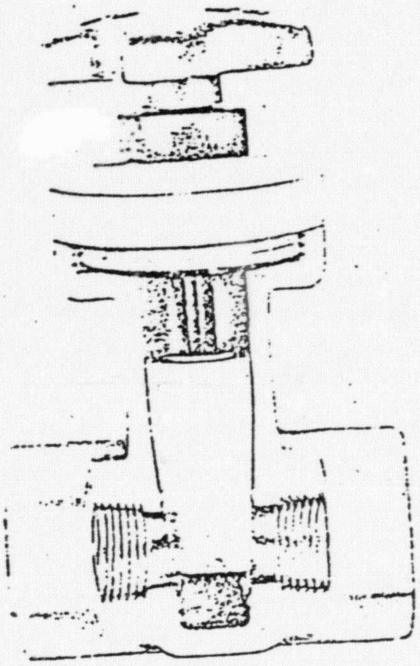


U.S. Patent No. 3,938,779

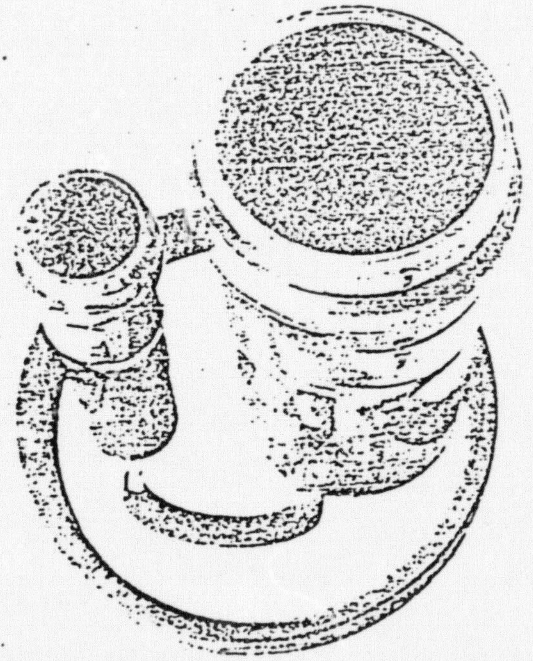
Flo-Tite Plastic, Inc.

The addition of FLO-TITE PLASTICS, INC. a California based manufacturer of extremely high quality gate valves has rounded off PRECISION'S catalog of valve specialties. The patented FLO-TITE valve, marketed under both the FLO-TITE name and PRECISION's ThermoPlastics trade mark offers distributors a single source for valves when combined with the specialties manufactured by Derbi Plastics, Inc.

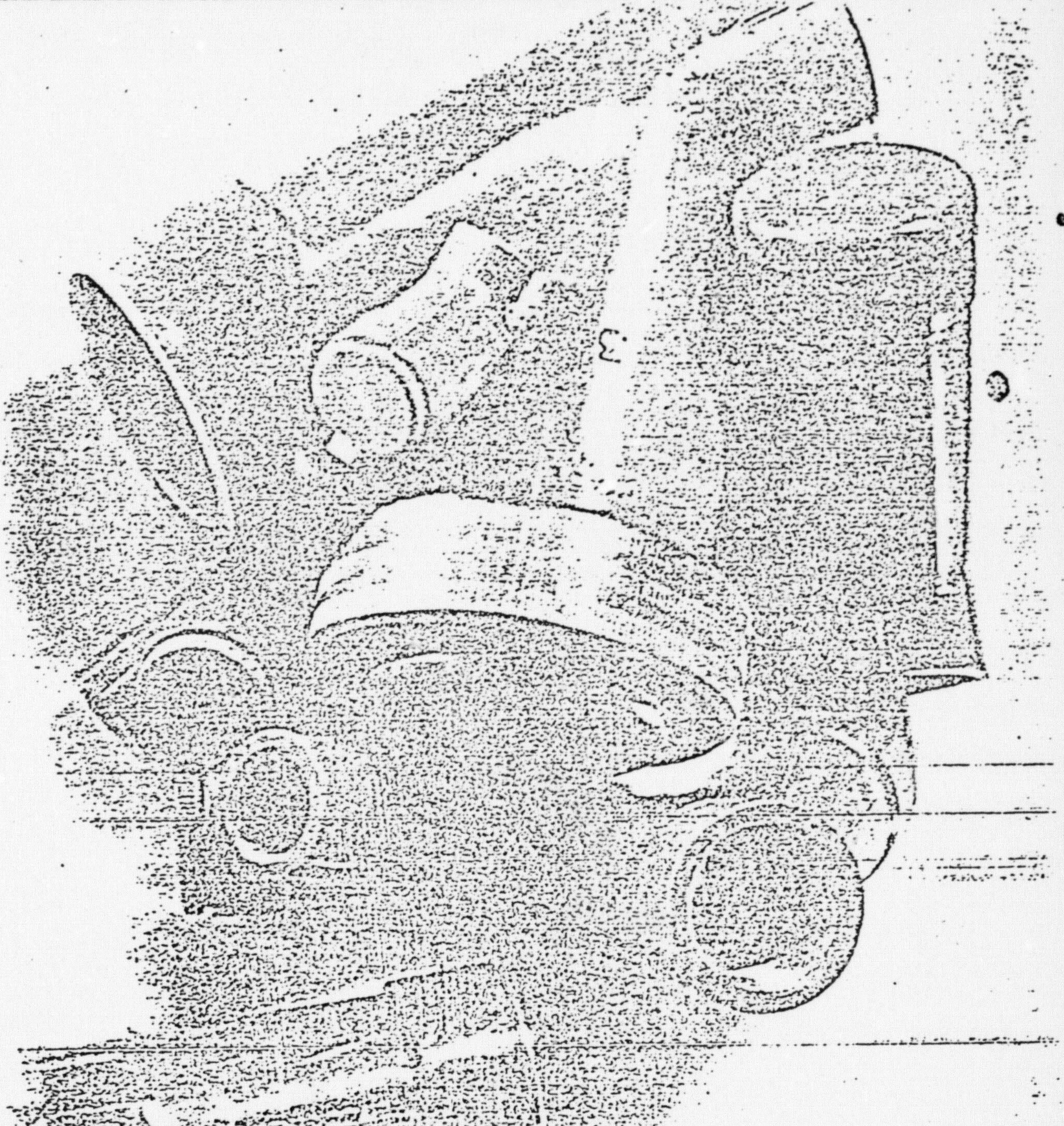
Commercial Irrigation, Municipal Water Supply, & Sewer Main Markets

Sales of products to these markets remains strong. Irrigation projects make use of both 200 lb. and Schedule 40 Pipe and some Schedule 80 Pipe, as well as a large proportion of fittings.

Water Supply and Sewer Main projects utilize a range of larger size pipe which employ a gasket seal. PRECISION'S E-Z SEAL™ joint is well received in the municipal water supply market and special efforts are being made to adapt this seal to Sewer Main projects; which will offer the company a strong selling advantage.



Unique E-Z SEAL™ joint.



Derbi Plastics, Inc.

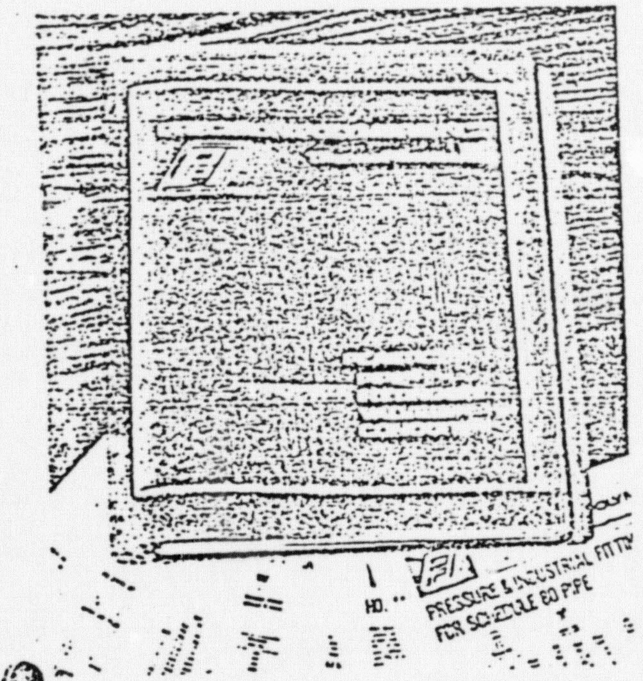
Derbi Plastics, Inc. of Temple, Texas is a leading manufacturer of thermoplastic ball, check, Y-Globe valves and sediment strainers. Derbi is one of the first companies to manufacture a molded four inch ball valve. These specialty items, produced by a very small number of manufacturers, when added to PRECISION'S complete line of materials adds considerable strength to the industrial marketing effort.

Industrial, Factory & Mill Supply, Plumbing & Heating Markets

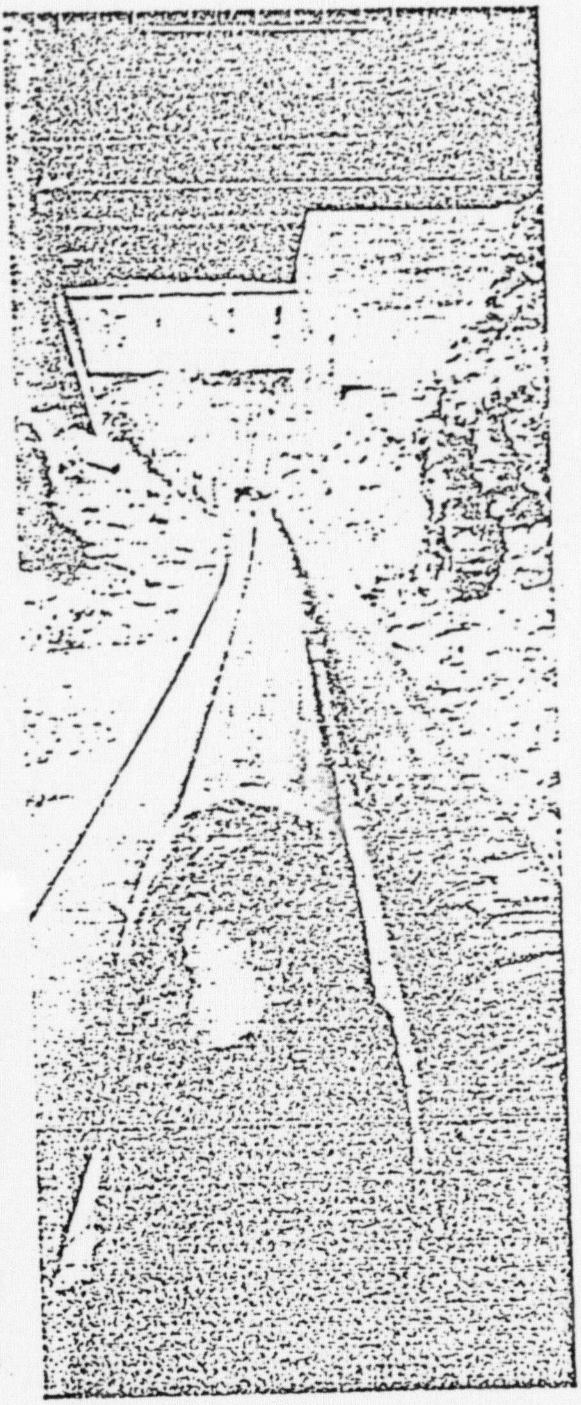
PRECISION'S special position as a supplier of a broad range of specialty items such as valves along with the capability to provide pipe in materials and sizes required for this market offers distributors the opportunity to look upon the company as a single source for most of their thermoplastic requirements.

PRECISION is considered as a plastic piping system company, offering in addition to broad product mix, effective distribution and service. Industrial customers will continue to utilize strategically located master distributors who find it advantageous to carry a full line of PRECISION'S piping system products.

PRECISION intends to further solidify its position as a leading industrial supplier by establishing additional select master distributors in several key areas.



PRECISION offers one of the largest catalogs of materials in the industry for industrial applications.



Typical industrial installation using PRECISION materials.

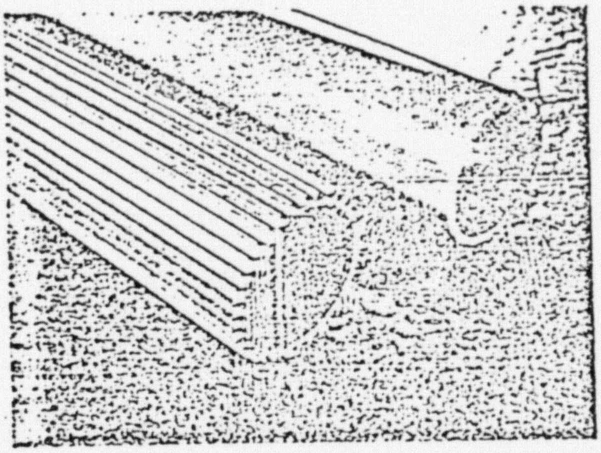
Hardware, Building Materials, Farm Co-op, & Consumer Markets

PRECISION has historically supplied these markets with a full range of products which include: Sewer Pipe and fittings, polyethylene tubing and fittings, CPVC Copper tube size piping and fittings, valves and pressure pipe and fittings.

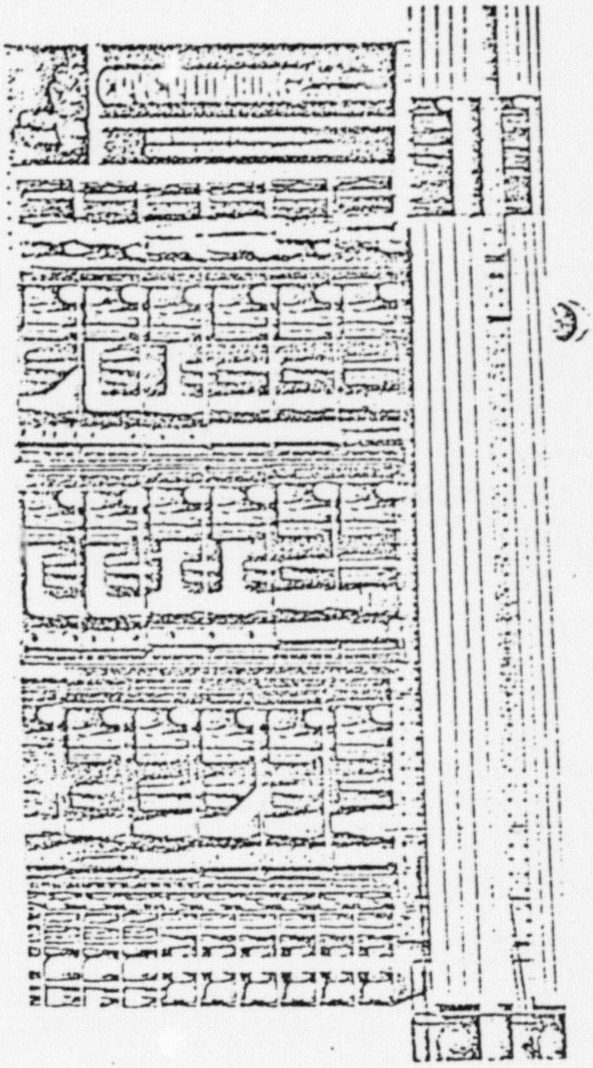
Special display materials, packages and merchandising aids have made these materials more desirable to this growing market. A number of Farm Co-ops continue to use PRECISION as a regular source of products for their markets.

O.E.M.

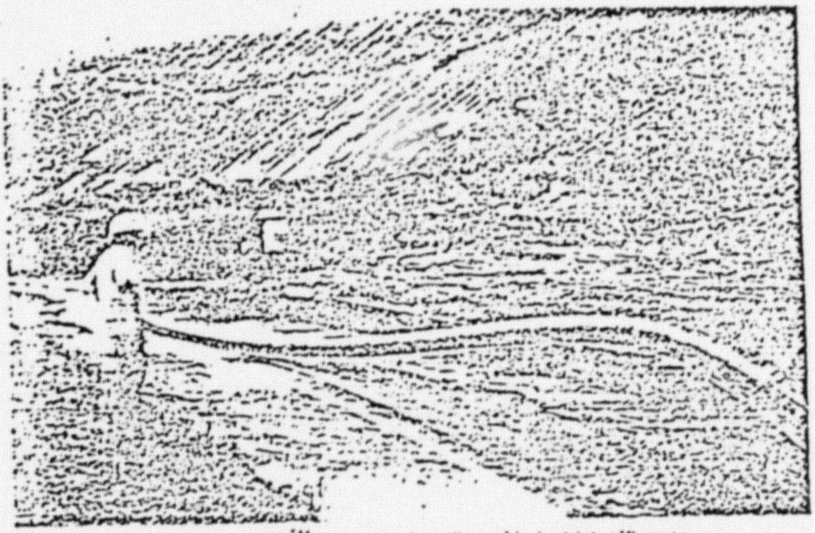
Many of PRECISION'S products are used as components by other companies in the manufacture of their products. These companies, called Original Equipment Manufacturers usually purchase high profit items such as valves and fittings. Sales to this market are on a direct basis.



PRECISION produces many unique products for O.E.M. manufacturers.



Hardware store display.



Typical use for Thermoline-PB™ pipe is the handling of industrial effluents.

Swimming Pool and Well Drilling

Many swimming pool and well drilling applications require high impact performance oriented products. PRECISION offers a special line of products for the market. Sales are direct and through manufacturers' agents calling on contractors and specialty supply houses serving these markets.

Large Diameter Polyethylene and Polybutylene Pipe, Drip Irrigation and High Technology Products

PRECISION'S products to these markets are sold on a specification basis and competition is limited to a few sophisticated companies.

Entry into these markets has further enhanced the company's reputation for high performance specialty products. "Drip irrigation" is a recently developed piping system for control of water and fertilizer emission at optimum levels to sites adjacent to trees and plants. This advanced concept of irrigation is receiving a widespread support by agronomists. The technique not only conserves water and fertilizer, but also provides an optimum growth and environment for particular species of vegetation. Crops using the new technique have demonstrated improved yields and irrigation costs have been reduced by as much as 60 to 70%. PPI expects to become active in this market during 1976.

PRECISION POLYMERS, INC. AND SUBSIDIARIES

CONSOLIDATED SUMMARY OF OPERATIONS

Five Years Ended December 31, 1975

	Year Ended December 31,				
	1971	1972	1973	1974	1975
NET SALES	$5,460,374	$15,855,255	$17,251,199	$17,266,319	$13,713,194
GAIN ON SALE OF LEASED FACTORY FACILITIES	-	-	-	-	$ 256,431
GAIN ON SETTLEMENT OF LAWSUIT	-	-	-	$ 578,524	
OTHER INCOME	-	-	-	$ 744,420	$ 1,695,632
COST OF GOODS SOLD	$4,021,361	$11,353,135	$12,788,434	$12,546,502	$10,593,587
INTEREST EXPENSE	$ 145,023	$ 561,406	$ 809,217	$ 438,700	$ 413,364
PROVISION (CREDIT) FOR TAXES ON INCOME	$ 43,000	$ 262,202	($ 56,556)	$ 726,000	$ 188,000
INCOME (LOSS) FROM CONTINUING OPERATIONS	$ 59,652	$ 231,867	($ 603,765)	$ 648,115	$ 193,955
INCOME (LOSS) FROM DISCONTINUED OPERATIONS	-	$ 110,000	($ 357,000)	-	-
INCOME (LOSS) BEFORE EXTRAORDINARY ITEMS	$ 59,652	$ 341,867	($ 960,765)	$ 648,115	$ 193,965
EXTRAORDINARY ITEMS	$ 43,000	$ 249,600	-	$ 587,000	-
NET INCOME (LOSS)	$ 102,652	$ 591,467	($ 960,765)	$ 1,235,115	$ 193,965
PER SHARE					
Earnings per capital share and capital equivalent share -					
Income (loss) from continuing operations	$.05	$.16	($.47)	$.50	$.16
Income (loss) before extraordinary items	$.05	$.24	($.75)	$.50	-
Net income (loss)	$.08	$.42	($.75)	$.95	$.16
Earnings per share assuming full dilution -					
Income from continuing operations		$.16			
Income before extraordinary items		$.24			
Net income		$.41			

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MANAGEMENT'S DISCUSSION AND ANALYSIS OF CONSOLIDATED SUMMARY OF OPERATIONS

YEAR 1975 COMPARED TO 1974.

Consolidated revenues decreased by 15.7 percent and income before taxes decreased by 72.2 percent. The decrease in revenue and income was primarily due to the decline in the price from the sale of pipe, fittings, valves and related products.

The economic conditions that existed throughout the country, especially in the private home, institutional and commercial building construction fields, reduced the demand which caused an oversupply and depressed prices.

Gross revenues from the sale of pipe, fittings, valves and related products were insufficient to cover selling, general and administrative and interest expenses. Income derived from other revenues including Sale of Lease (Note 7) and Deferred Income (Note 8), exceeded the deficiency and produced net income.

YEAR 1974 COMPARED TO 1973

In 1974 income from continuing operations before provision (credit) for income taxes increased $2,034,436 over 1973 because of the following factors:

1. Gain on settlement of lawsuit (Note 6 of Financial Statements)	$ 573,524
2. Interest expense reduction	370,517
3. Selling, general and administrative expense reduction	83,923
4. Increase in net sales and decrease in cost of goods sold	1,001,472
	$2,034,436

Interest expense was less primarily because of the reduction of long-term debt to $1,085,991 from $4,696,987. (See Note 6 of Financial Statements.)

Increase in net sales and decrease in cost of goods sold was due to a continued program of retrenchment and consolidation. Several plants were closed and the machinery transferred to other locations. The Company was also able to obtain a higher per unit price for its products because of the limited supply. The Company's increase sales of some of its raw material (resin and compound) from $1,805,000 in 1973 to $3,597,000 in 1974. Gross profit on such sales was 68 percent in 1973 and 52 percent in 1974.

Maintenance and repairs expense was $258,255 less in 1974 than 1973 primarily because the Company's production equipment was operating at less than capacity due to raw material unavailability (pipe production was 23 percent less in 1974 than 1973). In addition, the production equipment in use was newer, necessitating less maintenance and repairs.

Payroll taxes expense was $42,310 less in 1974 than 1973 because the Company decreased its work force when it shut down certain facilities.

Other taxes increased $24,529 because property taxes increased at most locations.

Rent expenses decreased $59,794 because of diminishing rental of three extruders and in early 1974 the Company commenced shipping by common carrier instead of renting over-the-road equipment.

Advertising costs were reduced $30,969 because of the lack of availability of product and the fact that it was a sellers market in 1974.

PRECISION POLYMERS, INC. AND SUBSIDIARIES

CONSOLIDATE

December 3

ASSETS

	1975	1974*
CURRENT ASSETS		
Cash	$ 148,121	$ 202,3[illegible]
Accounts receivable - Net of allowance for doubtful accounts - 1975 - $114,387; 1974 - $40,000 (Notes 5 and 6)	1,236,898	1,234,537
Notes receivable (Note 4)	142,563	
Inventories (Notes 1, 3, 5 and 6)	2,503,458	2,884,345
Prepaid expenses	121,321	95,812
	4,152,361	4,416,998
PROPERTY, PLANT AND EQUIPMENT		
Owned - At cost (Notes 1, 2, 5 and 6)		
Land	236,336	169,060
Buildings	725,940	725,940
Machinery and equipment	5,413,221	4,490,892
Furniture and fixtures	105,493	160,736
Leased (Note 7) -		
Factory facilities (Including land - $150,000)		557,000
Machinery and equipment	226,586	226,586
	6,707,576	6,330,214
Less: Accumulated depreciation and amortization	2,526,028	2,020,930
	4,181,548	4,309,284
OTHER ASSETS		
Notes receivable (Note 4)		137,542
Other	170,789	228,123
	170,789	365,665
	$8,504,698	$9,091,947

*Reclassified to conform to 1975 presentation.

See accompanying notes to the financial statements.

BALANCE SHEET

1975 and 1974

LIABILITIES

	1975	1974*
CURRENT LIABILITIES		
Advances from finance company (Note 5)	$ 946,143	$1,072,76
Trade notes payable	60,000	
Current portion of long-term debt (Note 6)	703,186	625,38
Current portion due under capitalized lease obligations (Note 7)	9,583	38,50
Accounts payable	1,868,366	1,395,01
Accrued liabilities	303,756	373,42
Accrued income taxes (Note 1)	81,275	143,94
	3,992,309	3,649,01
OTHER LIABILITIES AND UNEARNED INCOME		
Long-term debt (Note 6)	1,613,121	1,085,99
Capitalized lease obligations (Note 7)	33,419	374,56
Deferred compensation payable	87,489	59,86
Deferred income (Note 8)	1,066,407	2,438,25
Deferred taxes payable (Note 1)	170,000	
	2,970,436	3,958,67
	6,962,745	7,607,62
COMMITMENTS AND CONTINGENCIES (Notes 4, 8, 9 and 14)		
SHAREHOLDERS' EQUITY (Notes 10 and 11)		
PREFERRED STOCK —		
$1 par value		
Authorized - 500,000 shares		
Issued - None	-	-
CAPITAL STOCK -		
$.05 par value		
Authorized - 2,500,000 shares		
Issued - 1975 - 1,309,034 shares		
- 1974 - 1,329,034 shares	65,452	66,45
ADDITIONAL PAID-IN CAPITAL	1,082,654	1,100,76
RETAINED EARNINGS	539,905	345,94
	1,628,011	1,513,15
Less: Treasury stock - At cost - 1975 - 144,018 shares; 1974 - 29,892 shares	146,058	29,89
	1,541,953	1,484,25
	$8,504,698	$9,091,94

PRECISION POLYMERS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF INCOME

Years Ended December 31, 1975 and 1974

	1975	1974*
REVENUES		
Net sales (Note 13)	$13,713,194	$17,266,31[illegible]
Gain on sale of leased factory facilities (Note 7)	256,431	
Gain on settlement of lawsuit		578,524
Other (Note 8)	1,696,682	744 420
	15,666,307	18,589,263
EXPENSES		
Cost of goods sold	10,593,587	12,546,502
Selling, general and administrative	4,277,391	4,229,946
Interest - Net	413,364	438,700
	15,284,342	17,215,148
INCOME BEFORE PROVISION FOR INCOME TAXES	381,965	1,374,115
Provision for income taxes (Notes 1 and 14)	188,000	726,000
INCOME BEFORE EXTRAORDINARY ITEM	193,965	648,115
Income tax benefit arising from carryforwards		587,000
NET INCOME	$ 193,965	$1,235,115
EARNINGS PER CAPITAL SHARE (Note 12) -		
Income before extraordinary item	$.16	$.50
Extraordinary item	—	.45
Net income	$.16	$.95

*Reclassified to conform to 1975 presentation.

See accompanying notes to the financial statements.

PRECISION POLYMERS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF SHAREHOLDERS' EQUITY

Years Ended December 31, 1975 and 1974

	Capital Stock		Additional Paid-In Capital	Retained Earnings (Deficit)	Treasury Stock		Total Shareholders' Equity
	Shares	Amount			Shares	Amount	
BALANCE — JANUARY 1, 1974...	1,297,799	$64,890	$1,073,990	($ 889,175)			$ 249,705
Capital stock issued for services in lieu of cash (Note 10)...............	31,235	1,562	26,770				28,332
Purchase of Treasury stock.......					(29,892)	($ 28,892)	(28,892)
Net income for the year.................				1,235,115			1,235,115
BALANCE — DECEMBER 31, 1974........................	1,329,034	66,452	1,100,760	345,940	(29,892)	(28,892)	1,484,260
Retirement of capital stock (Note 10)...............	(20,000)	(1,000)	(17,750)				(18,750)
Purchase of Treasury stock.......					(117,126)	(120,147)	(120,147)
Net income for the year.................				193,965			193,965
Other......................			(356)		3,000	2,981	2,625
BALANCE — DECEMBER 31, 1975........................	1,309,034	$65,452	$1,082,654	$ 539,905	(144,018)	($146,058)	$1,541,953

See accompanying notes to the financial statements.

PRECISION POLYMERS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF CHANGES IN FINANCIAL POSITION

Years Ended December 31, 1975 and 1974

	1975	1974*
SOURCES OF WORKING CAPITAL		
From operations-		
Income before extraordinary item	$ 193,965	$ 648,115
Items not affecting working capital		
Depreciation and amortization of property, plant and equipment	628,862	640,251
Deferred income taxes	170,000	
Deferred compensation costs	27,628	27,628
Capital stock issued for services		28,332
Amortization of intangibles	6,764	7,240
Gain on sale of leased factory facilities	(256,431)	
Amortization of deferred income	(1,371,849)	(744,420)
Working capital provided from (used in) operations, excluding extraordinary credit	(601,061)	607,146
Income tax benefit arising from carryforwards		587,000
Working capital provided from (used in) operations	(601,061)	1,194,146
Increase in long-term debt	1,714,814	979,851
Retirements of property, plant and equipment	36,390	12,266
Net proceeds from sale of leased factory facilities	412,487	
(Increase) decrease in other assets	169,006	(227,473)
Increase in deferred income		3,182,576
	1,731,636	5,141,466
USES OF WORKING CAPITAL		
Additions to property, plant and equipment	1,064,079	278,987
Reduction in long-term debt	1,158,320	4,628,643
Purchase of Treasury stock	117,166	28,892
	2,339,565	4,936,522
INCREASE (DECREASE) IN WORKING CAPITAL	($ 607,929)	$ 204,944
CHANGES IN ELEMENTS OF WORKING CAPITAL		
Increase (Decrease)		
Current assets -		
Cash	($ 54,183)	($ 534,783)
Accounts receivable - Net	2,361	(1,093,518)
Notes receivable	142,553	
Inventories	(380,887)	443,979
Prepaid expenses	25,509	(53,547)
	(264,637)	(1,242,869)
Current liabilities -		
Advances from finance company	(126,617)	165,219
Trade notes payable	80,000	(253,988)
Current portion of long-term debt	77,817	(100,513)
Current portion due under capitalized lease obligation	(28,924)	10,691
Accounts payable	473,348	(510,059)
Accrued liabilities	(69,667)	(319,178)
Accrued income taxes	(62,665)	143,940
Deferred income		(330,000)
Customer prepayments		(248,925)
	343,292	(1,447,513)
INCREASE (DECREASE) IN WORKING CAPITAL	($ 607,929)	$ 204,944

*Reclassified to conform to 1975 presentation.

See accompanying notes to the financial statements.

NOTES TO THE FINANCIAL STATEMENTS

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

PRINCIPLES OF CONSOLIDATION

The accounts of the Company and all its subsidiaries have been consolidated in the accompanying financial statements and all significant intercompany accounts and transactions have been eliminated in consolidation.

INVENTORY VALUATION

Inventories are valued at the last-in, first-out (LIFO) method.

PROPERTY, PLANT AND EQUIPMENT

Expenditures for maintenance, repairs and betterments which could not materially prolong the normal useful life of an asset have been charged to operations as incurred. Additions and betterments which substantially extend the useful life of the properties are capitalized. Upon sale or other disposition of assets, the cost and related accumulated depreciation are removed from the accounts and the resulting gain or loss, if any, is reflected in income.

Buildings and machinery and equipment have been depreciated by the straight-line method over their estimated useful lives as follows:

Buildings	25-40 years
Machinery and equipment	3-12½ years
Furniture and fixtures	5-10 years

INCOME TAXES

Certain items of expense are recognized for financial reporting in periods that differ from those used for income tax reporting. Accordingly, in 1975, provisions for income taxes deferred to future years have been made in the accompanying financial statements. The differences arise principally from depreciation expense which for tax purposes is on an accelerated method and the provision for deferred compensation.

Investment tax credits are reflected as reductions of Federal income tax expense in the year realized (flow-through method). No investment tax credits were utilized in 1975 and 1974.

[illegible]

During June 1975, a wholly-owned subsidiary of the Company purchased the assets of Flo-Tite Plastics, Inc. consisting principally of machinery and equipment. The total purchase price was $318,734 of which $106,734 was paid in cash with the remaining $212,000 payable in the form of a promissory note. The note, which, among other things, is collateralized by the machinery and equipment purchased, bears interest at 8% and is payable in eight quarterly installments.

2. INVENTORIES

Inventories consist of:

	1975	1974
Raw materials and work in process...	$ 457,378	$ 826,325
Finished goods	2,046,080	2,057,520
	$2,503,458	$2,883,845

Effective January 1, 1974, the Company adopted the last-in, first-out (LIFO) method of determining inventory cost. Previously, the first-in, first-out (FIFO) method was used. Management believes that the LIFO method has the effect of minimizing the impact of price level changes on inventory valuations and generally matches current annual costs against current revenues in the income statement. The effect of the change was to reduce net income for the year ended December 31, 1974 by approximately $625,000 ($.48 per share) from that which would otherwise have been reported. Had the FIFO method been used with respect to such items, total inventories would have been approximately $930,000 and $1,324,000 higher at December 31, 1975 and 1974, respectively.

During the year ended December 31, 1975, inventory quantities were reduced. This reduction resulted in a liquidation of LIFO inventory quantities carried at lower costs prevailing in prior years as compared with the cost of 1975 purchases, the effect of which increased net income by approximately $51,000 or $.04 per share.

The Company had advanced $77,563 including accrued interest at 9½% to the then Executive Vice President of the Company in connection with his relocation from the United Kingdom to the vicinity of the Company's executive offices. In September 1975 his employment terminated. The Company has instituted suit against this former employee to seek repayment of the note. In the opinion of special counsel to the Company, the Company will recover a judgment against the former employee for monies advanced to him. A counterclaim has been entered by the former officer alleging a wrongful termination of employment, breach of employment contract, damages for defamation of character and punitive damages. The ultimate outcome of the counterclaim or the liability to the Company, if any, cannot be determined at present. However, special counsel to the Company is of the opinion that the Company has meritorious defenses and should prevail.

During 1974, the Company loaned $65,000 to the then Vice President/Sales ("Officer") of the Company in the form of a second mortgage note with interest at 9½%. The advance was made in

4. NOTES RECEIVABLE (continued)

connection with the officer's purchase of the personal residence of the Company's President and Chairman of the Board following the officer's relocation from Pittsburgh, Pennsylvania at the request of the Company to the vicinity of the Company's executive offices. During 1975, following the termination of the officer's employment with the Company, the officer instituted a suit against the Company. In March 1976, the parties agreed to settle this action by the officer receiving $20,000 out of the proceeds of the subsequent sale of the personal residence within a specified time period or $20,000 from the Company if the property is not sold within such period. Based on an independent appraisal of the home, management is of the opinion that they will not sustain a material loss, if any, on this transaction.

5. ADVANCES FROM FINANCE COMPANY

Under an agreement with a finance company, the Company receives cash advances for up to 90% of its nondelinquent accounts receivable at interest rates as defined in the agreement. On December 31, 1975 the interest rate was 6% over the prime rate. Substantially all of the Company's accounts receivable, inventories and certain machinery and equipment are pledged to secure payment of this obligation. The finance company has a participation agreement with a major bank whereby the interest rate charged the Company is reduced to an effective rate of 5¼% above prime.

6. LONG-TERM DEBT

Long-term debt consists of the following:

	1975	1974
Notes payable -		
Finance company		
Interest at 5¼% above prime; payable in weekly installments to January 1979; the balance of $147,000 is payable on demand thereafter; the 1974 balance was paid in September 1975	$ 951,000	$ 362,000
Interest at 8%; payable in quarterly installments to June 1, 1977 (Note 2)	158,349	
Interest at 6% above prime (13¼%); payable in monthly installments to April 1, 1977 with balance of $104,954 due on demand; unsecured	234,954	
9% - Payble in monthly installments to November 30, 1982	81,959	90,140
Allied Chemical Corporation		
Interest at 1% above prime rate; payable in varying monthly installments to September 22, 1975 (A)		115,000
Other - Primarily machinery and equipment purchase obligations - Due in various monthly installments and interest rates to June 23, 1978	281,937	407,[illegible]
Real estate mortgages payable -		
Interest at 5½%: payable in monthly installments to November 1, 1982	92,187	112,021
Interest at 12½%: payable in varying monthly installments to August 1984; at which time the balance of $297,000 is due	515,921	625,000
	2,316,307	1,711,360
Less: Current portion	703,186	625,369
	$1,613,121	$1,085,991

Substantially all of the Company's accounts receivable, inventories, and property, plant and equipment, exclusive of those items mentioned in Note 5 are pledged to secure payment of these obligations.

The approximate aggregate annual maturities of principal payable on long-term debt over the next five years are as follows:

1976	$703,000
1977	583,000
1978	360,000
1979	256,000
1980	63,000

(A) On May 24, 1974, the litigation between Allied Chemical Corporation and the Company was dismissed pursuant to an out-of-court settlement which included mutual releases of all pending claims between the parties. Under the terms of the agreement the debt owed Allied, $1,328,524 ($1,152,045 principal plus $176,479 interest) at May 24, 1974, was [illegible]duced by $628,524 to $700,000. In addition, a subsidiary of the Company obtained a contract to purchase additional polyvinyl chloride compound (20,000,000 pounds over a five-year period).

7. CAPITALIZED LEASE OBLIGATIONS

The Company leased its Rockaway, New Jersey facility under a lease agreement entered into in May 1968, at annual rentals of $49,242. During September 1975, the Company sold its lease position in the property for approximately $440,000 in cash. The gain on sale of $256,431, net of closing costs, is included in the accompanying consolidated statement of income.

In addition, machinery and equipment was capitalized under long-term leases which were essentially installment purchases.

Accordingly, the Company's obligation under these leases is treated as liabilities in the consolidated financial statements.

8. DEFERRED INCOME

On March 13, 1974, the Company agreed ex-change part of its contractual right to purchase PVC resin from a supplier for a cash consid-eration and cancellation of certain promissory notes payable to Whittaker Corporation ("Whitta-ker"). The notes, net of the cash payment made by the Company, aggregated approximately $2,512,700. The Company has a contingent re-sponsibility to purchase from Whittaker up to $1,800,000 (amount in excess of the material cost), of material deemed to be "late material," as defined in the agreement, at the same price per pound used in computing the exchange of part of the Company's contractual rights for the promissory notes. The realization of the $712,700 ($2,512,700 less $1,800,000) of In-come is not contingent upon any future events. At December 31, 1975, the contingent responsi-bility to purchase "late material" amounted to ap-proximately $1,000,000.

In addition, the Company received a commission of approximately $670,000 from a certain cus-tomer of Whittaker, who will be the ultimate recipient of the PVC resins under the exchange agreement. The Company deferred the aggre-gate of the income on the cancellation of the notes of $2,512,700 and the commission of $670,000 and will amortize the amount to in-come on a pro rata basis as PVC resins are made available to Whittaker under the exchange agreement with the Company's supplier through 1976.

Amortization relating to the deferred income is included in income-other in the accompanying consolidated statement of income for the years ended December 31, 1975 and 1974 in the amount of $1,371,849 and $744,420, respective-ly.

9. COMMITMENTS AND CONTINGENCIES

(A) Total rent charged to expenses for the years ended December 31, 1975 and 1974 amount-ed to approximately $449,000 and $377,000, respectively. Approximate minimum rentals payable by the Company under noncancel-lable leases in force at December 31, 1975 (other than capitalized lease obligations re-ferred to in Note 7) are as follows:

1976	$176,000
1977	155,000
1978	70,000
1979	63,000
1980	63,000
1981-1985	314,000
1986-1990	314,000
1991-1993	140,000

Substantially all of these leases are noncapita-lized finance leases.

The present value of noncapitalized finance leases at December 31, 1975 was approxima-tely $740,000, using an interest rate of 9%.

If the Company had capitalized its financing leases and the related assets were amortized on the straight-line method and interest costs were accrued on the basis of the outstanding lease liability, net income for the year ended December 31, 1975 would have been in-creased by $60,000. Amortization of $40,000 and interest of $85,000 is included in the fore-going computations.

(B) The Company has a 20 year lease on its cor-porate headquarters at an annual rental of $62,805. The lessor is a partnership in which the Company's President is a 19% partner. In management's opinion, the rental is com-parable to that prevailing in the adjacent busi-ness area.

(C) During June 1975, the Company commenced legal proceedings against its former indepen-dent auditors alleging certain negligence on their part relating to the Company's account-ing treatment of deferred income (Note 8). The Company claims compensatory damages of $750,000 and punitive damages of $1,000,000. The auditors have filed a counter-claim against the Company and the Company's President and Chairman of the Board ("Offi-cer"), for damages aggregating $10,000,000. The counterclaim alleges that the Company and its officer uttered false and defamatory statements against the auditors. All parties have denied the material allegations of the various complaints. The case is in the dis-covery stages. It is the opinion of manage-ment and its general counsel, that the Com-pany's claims are meritorious and that the auditor's counterclaim is without merit.

(D) There are various lawsuits pending against the Company which arose in the normal course of business. Based on the opinion of the Company's counsels, for the various law-suits, management believes that the ultimate liabilities, if any, will not be significant.

10. CAPITAL STOCK

The Company has reserved 150,000 shares of capital stock to be issued for services rendered in lieu of cash. Income is charged based on the market value of the shares on the date of grant. Through 1975 67,153 shares were issued of which 20,000 shares were returned during 1975 and retired. Related charges to income are not significant.

At December 31, 1975, 102,847 shares were available for future issuance.

11. STOCK OPTIONS

At December 31, 1975 and 1974, 108,000 and 108,250 shares, respectively, of capital stock were reserved for issuance to officers and key employees under the Company's 1967, 1972 and 1974 qualified stock option plans. The 1967 plan expired in 1972. The 1972 and 1974 plans require that the options be granted at not less than the market value at the date of grant and are exercisable at any time within five years of the date of grant.

	Options Outstanding		
	Number of Shares	Option Price Range and Fair Market Value at Date of Grant	
		Per Share	Total
1967 Plan			
Jan. 1, 1974	14,750	$2.375	$35,031
Terminated	(6,500)	$2.375	(15,438)
Dec. 31, 1974	8,250	$2.375	19,593
Terminated	(250)	$2.375	(593)
Dec. 31, 1975	8,000		19,000
1972 Plan			
Jan. 1, 1974	20,000	$.76-$1.50	18,900
Granted	40,000	$.91-$1.0625	37,585
Terminated	(10,000)	$.76	(7,600)
Dec. 31, 1974	50,000	$.76-$1.50	48,885
Terminated	(9,000)	$.76-$1.0625	(7,800)
Dec. 31, 1975	41,000		41,085
1974 Plan			
Granted	8,000	$1.0625	8,500
Dec. 31, 1974	8,000	$1.0625	8,500
Granted	9,000	$.50-$1.25	8,750
Terminated	(10,000)	$.75-$1.0625	(10,000)
Dec. 31, 1975	7,000		7,250
Totals	56,000	$.50-$2.375	$67,335

At December 31, 1975 options as to 52,000 shares of capital stock were available for future grant.

The Company makes no charge to income in connection with the granting of options.

12. EARNINGS PER CAPITAL SHARE

Earnings per capital share are computed on the weighted average number of shares outstanding during each year. The assumed exercise of stock options would not result in a material dilution of earnings per share in both 1975 and 1974.

13. OPERATIONS

During 1973 and continuing through 1974, a shortage of PVC resin, a petrochemical product which is a major raw material used in the manufacture of a large portion of the Company's products, resulted in substantial reduction in the production of the Company's products. It became expedient to resell some of the Company's limited quantities of PVC resin, contractually committed to it by one of the several suppliers to nonrelated purchasers. For the years ended December 31, 1975 and 1974 sales of resin and compound totaled $781,000 and $2,853,000, respectively.

14. INCOME TAXES

Provision for income taxes is summarized as follows:

	1975	1974
Current -		
State and local	$18,000	$139,000
Deferred -		
Federal	153,000	
State and local	17,000	
	170,000	
Tax effect of carryforwards		587,000
	$188,000	$726,000

15. SUBSEQUENT EVENT

On March 19, 1976 a wholly-owned subsidiary of the Company acquired certain machinery, equipment and leasehold improvements for $300,000. The purchase price was financed through a loan from a finance company in the amount of $350,000 bearing interest at 5¼% above the prime rate. The loan is repayable at the rate of $2,000 weekly commencing May 10, 1976 with the balance due on March 5, 1977. Interest is payable monthly commencing April 1, 1976. The machinery and equipment purchased is collateral for the loan.

In connection with the above transaction the Company has entered into a five year lease for premises at an annual rental of approximately $116,000 plus certain expenses for taxes, insurance and maintenance.

In addition the Company has entered into a sublicense agreement with the seller providing for royalties of from 2.25% to 2.35% of the net invoice price of certain pipe.

BEST COPY AVAILABLE

REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

Board of Directors and Shareholders
Precision Polymers, Inc.

We have examined the consolidated balance sheet of PRECISION POLYMERS, INC. AND SUBSIDIARIES at December 31, 1975 and 1974 and the related consolidated statements of income, shareholders' equity and changes in financial position for the years then ended. Our examinations were made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, these financial statements present fairly the financial position of PRECISION POLYMERS, INC. AND SUBSIDIARIES at December 31, 1975 and 1974 and the results of their operations and changes in financial position for the years then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

J.K. LASSER & COMPANY

New York, New York
March 19, 1976

PRICE RANGE OF COMMON STOCK

Prior to October 19, 1967, there was no public market for the Company's Common Stock. The Common Stock has been traded in the over-the-counter market since October 1967, and on the National Stock Exchange from July 7, 1969 through September 16, 1974 when the Company's election to trade on the Boston Stock Exchange became effective. Delisting on the National Stock Exchange became effective on October 21, 1974. The following table shows the range of bid prices per share of Common Stock in the over-the-counter market (quotations are from the National Daily Quotation Service through December 29, 1972, and from the NASDAQ system thereafter, which represents prices between dealers, does not include retail markups, markdowns or commissions, and does not necessarily represent actual transactions), and the range of the high and low sales prices on the National Stock Exchange and the Boston Stock Exchange for the periods indicated as reported by each respective exchange.

OVER-THE COUNTER BID PRICES

	High	Low
1967 (from October 19)	5	2-1/8
1968	8-1/8	6
1969 (through July 6)	9-1/4	3-1/4

NATIONAL STOCK EXCHANGE SALE PRICES

	High	Low
1969 (July 7 through December 31)	5	1-1/4
1970 First Quarter	4-1/8	1-1/2
Second Quarter	2-7/8	1-1/8
Third Quarter	3-1/8	1-3/4
Fourth Quarter	3	1-1/4
1971 First Quarter	2-3/4	1-5/16
Second Quarter	3-7/8	1-3/4
Third Quarter	2-1/2	1-5/8
Fourth Quarter	1-7/8	1-1/4

	High	Low
1972 First Quarter	7-3/8	1-7/16
Second Quarter	5-7/8	4-1/8
Third Quarter	5-5/8	4-1/8
Fourth Quarter	4-3/4	3
1973 First Quarter	3-1/2	2
Second Quarter	2-7/8	1-1/4
Third Quarter	1-3/4	1
Fourth Quarter	1-1/4	$ .31
1974 First Quarter	1	$ .40
Second Quarter	1-3/8	$ .40
July 1 through September 16	1-1/4	$ .76

BOSTON STOCK EXCHANGE SALE PRICE

	High	Low
1974 September 16 thru December 31	1	$ .80
1975 January 1 thru December 1	2-3/4	3/8

Precision Polymers, Inc.'s Annual Report to the Securities and Exchange Commission (Form 10-K) will be available after April 30, 1975, on written request to the Company at 1136 Rt. 22, Mountainside, N.J. 07092.

1-6008-2
Orig.

RECD S.E.C.
MAY 27 1976

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

QUARTERLY REPORT UNDER SECTION 13 OR 15 (d)
OF THE SECURITIES EXCHANGE ACT OF 1934

For thirteen weeks ended March 28, 1976 Commission file number 1-6008

Precision Polymers, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

22-1826422
(I.R.S. Employer Identification No.)

1136 Route 22, Mountainside, New Jersey
(Address of principal executive offices)

07092
(Zip Code)

Registrant's telephone number, including area code (201) 654-4400

No Change
(Former name, former address and former fiscal year, if changed from last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes X. No ____.

MANAGEMENT REPRESENTATION

The following condensed financial information is submitted in response to the requirements of Form 10-Q and does not purport to be financial statements prepared in accordance with generally accepted accounting principles. It, therefore, does not include all disclosures which might be associated with such statements. In the opinion of management such information includes all adjustments, consisting of only normal accruals, necessary to a fair statement of the results for the interim period presented.

PRECISION POLYMERS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF INCOME (LOSS)

THIRTEEN WEEKS ENDED MARCH 28, 1976 AND MARCH 30, 1975

	1976	1975*
REVENUES		
Net sales (Note 5)	$3,545,513	$3,153,521
Other	319,464	376,229
	3,864,977	3,529,750
EXPENSES		
Cost of goods sold	2,985,442	2,412,597
Selling, general and administrative	948,127	918,887
Interest - net	109,836	95,893
	4,043,405	3,427,377
INCOME (LOSS) BEFORE PROVISION FOR INCOME TAXES	(178,428)	102,373
Provision (credit) for income taxes (Notes 1 and 6)	(87,500)	35,000
NET INCOME (LOSS)	$ (90,928)	$ 67,373
EARNINGS PER CAPITAL SHARE (Note 4)		
Net income (loss)	($ .08)	$ .05
DIVIDENDS PER SHARE	None	None

* Reclassified to conform to 1976 presentation

** Restated

See accompanying notes to the financial statements.

PRECISION POLYMERS, INC. AND SUBSIDIARIES

MANAGEMENT'S DISCUSSION AND ANALYSIS OF CONSOLIDATED SUMMARY OF OPERATIONS

THIRTEEN WEEKS ENDED MARCH 28, 1976
COMPARED TO THIRTEEN WEEKS ENDED MARCH 30, 1975

Consolidated revenues increased by $335,227 and net income decreased by $158,301; sale of pipe, fittings, valves and related products increased by 12.4 percent and other revenues decreased 15.1 percent. However, the highly competitive situation in the marketplace, because of economic conditions, caused the average selling price during the first thirteen weeks of 1976 to be below the amount necessary to cover expenses. In the first period 1975 we had resin sales of $272,090 compared to $28,526 for the same period in 1976. This contributed to the higher gross profit for the period in 1975.

On January 13, 1976, the Company announced a 10 percent price increase to take effect on orders placed after Febraury 1, 1976. This resulted in a large number of orders being placed at lower prices and helped increase the Company's backlog to its highest point in several years. This backlog, even with the increase in prices, has remained constant throughout the first quarter.

PRECISION POLYMERS, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEET

MARCH 28, 1976

ASSETS

CURRENT ASSETS	
Cash	$ 30,449
Accounts receivable - Net allowance for doubtful accounts-1976-$82,912	2,024,995
Notes receivable	153,816
Inventories (Note 3)	2,110,651
Prepaid expenses	171,245
	$4,491,156
PROPERTY, PLANT AND EQUIPMENT	
Owned - At cost	
Land	236,336
Buildings	725,940
Machinery and equipment	5,633,287
Furniture and fixtures	106,558
Leased	
Machinery and Equipment	226,586
	6,928,707
Less: Accumultated depreciation and amortization	2,712,751
	4,215,956
OTHER ASSETS	198,374
	$8,905,436

See accompanying notes to the financial statements.

PRECISION POLYMERS, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEET

MARCH 28, 1976

LIABILITIES

CURRENT LIABILITIES	
Advances from finance company	$1,501,757
Trade notes payable	-
Current portion of long-term debt	728,793
Current portion due under capitalized lease obligations	9,328
Accounts payable	2,122,349 <-
Accrued liabilities	418,429
Accrued income taxes	82,758
	4,863,414
OTHER LIABILITIES AND UNEARNED INCOME	
Long-term debt	1,644,246
Capitalized lease obligations	28,677
Deferred compensation payable	94,396
Deferred income	746,943
Deferred taxes payable (Notes 1 and 6)	82,500
	2,596,762
	7,460,176

SHAREHOLDERS' EQUITY

PREFERRED STOCK - $1 par value Authorized - 500,000 shares Issued - None	-
CAPITAL STOCK - $.05 par value Authorized - 2,500,000 shares Issued - 1976 - 1,309,034 shares	65,452
ADDITIONAL PAID-IN CAPITAL	1,082,654
RETAINED EARNINGS	448,977
	1,597,083
Less: Treasury stock - At cost - 1976 - 149,733 shares	(151,773)
	1,445,310
	$8,905,485

See accompanying notes to the financial statements.

PRECISION POLYMERS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF CHANGES IN FINANCIAL POSITION

THIRTEEN WEEKS ENDED MARCH 28, 1976

SOURCES OF WORKING CAPITAL	
From operations-	
Net income (loss)	($ 90,928)
Items not affecting working capital -	
Depreciation and amortization of property, plant and equipment	186,723
Deferred income taxes recovery	(87,500)
Deferred compensation costs	6,907
Amortization of intangibles	2,059
Amortization of deferred income	(319,464)
Working capital provided from (used in) operations	(302,203)
Increase in long-term debt (Net)	26,383
(Increase) decrease in other assets (Net)	(29,644)
	(305,464)
USES OF WORKING CAPITAL	
Additions to property, plant and equipment (Net)	221,131
Purchase of Treasury stock	5,715
	226,846
INCREASE (DECREASE) IN WORKING CAPITAL	($532,310)
CHANGES IN ELEMENTS OF WORKING CAPITAL	
Increase (Decrease)	
Current assets -	
Cash	($117,672)
Accounts receivable - Net	788,097
Notes receivable	11,253
Inventories	(392,807)
Prepaid expenses	49,924
	338,795
Current liabilities -	
Advances from finance company	555,614
Trade notes payable	(80,000)
Current portion of long-term debt	25,607
Current portion due under capitalized lease obligations	(255)
Accounts payable	253,983
Accrued liabilities	114,673
Accrued income taxes	1,483
	871,105
INCREASE (DECREASE) IN WORKING CAPITAL	($532,310)

See accompanying notes to the financial statements.

PRECISION POLYMERS, INC. AND SUBSIDIARIES

NOTES TO THE FORM 10-Q

1. ACCOUNTING POLICIES

INCOME TAXES

Tax effect of loss is recognized in the loss period to the extent of any deferred taxes.

2. ACQUISITIONS

On March 19, 1976, a wholly-owned subsidiary of the Company acquired certain machinery, equipment and leasehold improvements for $300,000. The purchase price was financed through a loan from a finance company in the amount of $350,000 bearing interest at 5 1/4 percent above the prime rate. The loan is repayable at the rate of $2,000 weekly commencing May 10, 1976 with the balance due on April 15, 1977. Interest is payable monthly commencing April 1, 1976. The machinery and equipment purchased is collateral for the loan.

3. INVENTORIES

Inventories consist of:

	1976
Raw materials and work in process	$ 456,529
Finished goods	1,654,122
	$2,110,651

4. EARNINGS PER CAPITAL SHARE

Earnings per capital share are computed on the weighted average number of shares outstanding during each period of 1,162,960 and 1,261,713 for 1976 and 1975, respectively. The assumed exercise of stock options would not result in a material dilution of earnings per share in both 1976 and 1975.

5. OPERATIONS

During 1973 and continuing through 1974, a shortage of PVC resin, a petrochemical product which is a major raw material used in the manufacture

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PRECISION POLYMERS, INC. AND SUBSIDIARIES

NOTES TO THE FORM 10-Q
(Continued)

5. OPERATIONS (Continued)

of a large portion of the Company's products, resulted in substantial reduction in the production of the Company's products. It became expedient to resell some of the Company's limited quantities of PVC resin, contractually commited to it by one of the several suppliers to nonrelated purchasers. For the thirteen weeks ended March 28, 1976 and March 30, 1975, sales of resin and compound totaled $28,526 and $272,090, respectively.

6. INCOME TAXES AND OPERATING LOSS CARRY-FORWARD

Provision for income taxes is summarized as follows:

	March 28, 1976	December 31, 1975
Current - State and local	$ -	$ 18,000
Deferred - Federal	(87,500)	153,000
- State and local	-	17,000
	(87,500)	170,000
	($87,500)	$188,000

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act [illegible] 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Precision Polymers, Inc.
(Registrant)

Date 5/26/76

Marvin A. Rosenblum
President

Date 5/25/76

William Malia
Senior Vice President-Finance

nc

7

RECD S.E.C.

AUG 13 1976

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

QUARTERLY REPORT UNDER SECTION 13 OR 15 (d) OF THE SECURITIES EXCHANGE ACT OF 1934

For twenty-six weeks ended June 27, 1976 Commission file number 1-6008-2

PEG.

Precision Polymers, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

22-1826422
(I.R.S. Employer Identification No.)

1136 Route 22, Mountainside, New Jersey
(Address of principal executive offices)

07092
(Zip Code)

Registrant's telephone number, including area code (201) 654-4400

No Change
(Former name, former address and former fiscal year, if changed from last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes X . No __________.

MANAGEMENT REPRESENTATION

The following condensed financial information is submitted in response to the requirements of Form 10-Q and does not purport to be financial statements prepared in accordance with generally accepted accounting principles. It, therefore, does not include all disclosures which might be associated with such statements. In the opinion of management such information includes all adjustments, consisting of only normal accruals, necessary to a fair statement of the results for the interim period presented.

PRECISION POLYMERS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF INCOME (LOSS)

THIRTEEN WEEKS ENDED JUNE 27, 1976 AND JUNE 29, 1975

	1976	1975*
REVENUES		
Net sales (Note 5) includes 85,570 in [illegible]	$4,464,851	$3,985,07
Other	319,464 - ?	387,58
	4,784,315	4,372,65
EXPENSES		
Cost of goods sold	3,394,974	2,939,75
Selling, general and administrative	1,162,783	1,119,73
Interest-net	135,347	103,42
	4,693,104	4,162,90
INCOME (LOSS) BEFORE PROVISION FOR INCOME TAXES	91,211	209,75
Provision (credit) for income taxes (Notes 1 and 6)	44,000	110,90
NET INCOME (LOSS)	$ 47,211	$ 98,85
EARNINGS PER CAPITAL SHARE (Note 4)		
Net income (loss)	$ .04	$ .08
DIVIDENDS PER SHARE	None	None

* Reclassified to conform to 1976 presentation

** Restated (Note 6)

See accompanying notes to the financial statements.

PRECISION POLYMERS, INC. AND SUBSDIARIES

CONSOLIDATED STATEMENT OF INCOME (LOSS)

TWENTY-SIX WEEKS ENDED JUNE 27, 1976 AND JUNE 29, 1975

	1976	1975*
REVENUES		
Net Sales (Note 5)	$8,010,364	$7,138,5
Other	638,928	763,81
	8,649,292	7,902,4
EXPENSES		
Cost of goods sold	6,380,416	5,352,3
Selling, general and administrative	2,110,910	2,038,6
Interest-net	245,183	199,3
	8,736,509	7,590,2
INCOME (LOSS) BEFORE PROVISION FOR INCOME TAXES	(87,217)	312,1
Provision (credit) for income taxes (Notes 1 and 6)	(43,500)	145,9
NET INCOME (LOSS)	$ (43,717)	$ 166,2
EARNINGS PER CAPITAL SHARE (Note 4)		
Net income (loss)	($ .04)	$ .13
DIVIDENDS PER SHARE	None	None

*Reclassified to conform to 1976 presentation

**Restated (Note 6)

See accompanying notes to the financial statements.

PRECISION POLYMERS, INC. AND SUBSIDIARIES

MANAGEMENT'S DISCUSSION AND ANALYSIS OF CONSOLIDATED SUMMARY OF OPERATIONS

THIRTEEN WEEKS ENDED JUNE 27, 1976 COMPARED TO THIRTEEN WEEKS ENDED MARCH 28, 197

Consolidated revenue increased by $919,338 or 23.8 percent. This increase is contributable to the improving economic conditions and the seasonal aspects of the Company's products.

Income before taxes increased by $269,639.

Gross profits increased because of higher selling prices for the Company's products combined with manufacturing cost savings resulting from higher production levels due to an increase in demand.

Selling, general and administrative expenses increased. Items such as agent commissio and warehouse commissions rose in direct proportion to the increase in sales, but freight cost to customers and Company warehouses increased by 1.4 percent of sales, combined with an increase in legal and consulting fees and other G & A expenses served to reduce the effect of the increased volume on income.

Interest expense increased by $25,511.

THIRTEEN WEEKS ENDED JUNE 27, 1976 COMPARED TO THIRTEEN WEEKS ENDED JUNE 29, 19

Consolidated revenue increased by $411,657 or 9.4 percent and net income decreased by $51,640; sale of pipe, fittings, valves and related products increased by 12.0 percent while sale of resin decreased from $267,203 to $85,870. The higher resin sales in 1975 contributed to the higher gross profit during that period.

Selling, general and administrative expenses have increased in 1976 with freight bein

PRECISION POLYMERS, INC. AND SUBSIDIARIES

MANAGEMENT'S DISCUSSION AND ANALYSIS OF CONSOLIDATED SUMMARY OF OPERATIONS

(Continued)

a factor. Freight costs have increased over 1.0 percent of sales. The Company is shipping a larger percentage of their product to areas outside of plant and warehouse locations.

Interest expenses are up because of increased borrowings.

TWENTY-SIX WEEKS ENDED JUNE 27, 1976 COMPARED TO TWENTY-SIX WEEKS ENDED JUNE 29, 1

Consolidated revenue increased by $746,884 or 9.5 percent and net income decreased $209,941; sale of pipe, fittings, valves and related products increased 12.2 percent and other revenue decreased 16.4 percent.

Gross profits were down considerably because of the low selling prices of the Company' products during the first quarter which were caused by the highly competitive situation in the marketplace because of economic conditions. In the first twenty-six week period 197 we had resin sales of $539,292 compared to $114,396 for the same period in 1976. The higher resin sales in 1975 contributed to the higher gross profit during the period.

Selling, general and administrative expenses have increased in 1976 with freight cost to customers being a factor. They have increased over 1.0 percent of sales. The Compar is shipping a larger percentage of their products to areas outside of plant and warehouse locations.

PRECISION POLYMERS, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEET

JUNE 27, 1976

ASSETS

CURRENT ASSETS	
Cash	$ 5,340
Accounts receivable - Net allowance for doubtful accounts - 1976 -$87,038	2,000,581
Notes receivable	156,434
Inventories (Note 3)	2,952,868
Prepaid expenses	225,706
	$5,340,929
PROPERTY, PLANT AND EQUIPMENT	
Owned - At cost	
Land	$ 236,336
Buildings	725,940
Machinery and equipment (Note 2)	5,726,239
Furniture and fixtures	106,558
Leased	
Machinery and equipment	226,586
	7,021,659
Less: Accumulated depreciation and amortization	2,893,819
	4,127,840
OTHER ASSETS	
Notes receivable	-
Other	158,834
	158,834
	$9,627,603

See accompanying notes to the financial statements.

PRECISION POLYMERS, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEET

JUNE 27, 1976

LIABILITIES

CURRENT LIABILITIES	
Advances from finance company	$1,652,853
Trade notes payable	875,000
Current portion of long-term debt	800,220
Current portion due under capitalized lease obligations	9,629
Accounts payable	1,894,303
Accrued liabilities	456,501
Accrued income taxes	81,068
	5,769,574
OTHER LIABILITIES AND UNEARNED INCOME	
Long-term debt	1,689,425
Capitalized lease obligations	26,516
Deferred compensation payable	101,303
Deferred income	427,479
Deferred taxes payable (Notes 1 and 6)	126,500
	2,371,223
	8,140,797

SHAREHOLDERS' EQUITY

PREFERRED STOCK- $1 par value Authorized - 500,000 shares Issued - None	-
CAPITAL STOCK- $ .05 par value Authorized - 2,500,000 Issued-1976 - 1,309,034	65,452
ADDITIONAL PAID-IN CAPITAL	1,082,654
RETAINED EARNINGS	496,188
	1,644,294
Less: Treasury stock-at cost-1976 - 155,448 shares	(157,488)
	1,486,806
	$9,627,603

See accompanying notes to the financial statements.

PRECISION POLYMERS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF CHANGES IN FINANCIAL POSITION

TWENTY-SIX WEEKS ENDED JUNE 27, 1976

SOURCES OF WORKING CAPITAL	
From operations-	
Net income (loss)	$ (43,717)
Items not affecting working capital-	
Depreciation and amortization of property, plant and equipment	367,791
Deferred income taxes	(43,500)
Deferred compensation costs	13,814
Amortization of intangibles	-
Amortization of deferred income	(638,928)
Working capital provided from (used in) operations	(344,540)
Increase in long-term debt (net)	69,401
Decrease in other assets (net)	11,955
	(263,184)
USES OF WORKING CAPITAL	
Additions to property, plant and equipment (net) (Note 2)	314,083
Purchase of treasury stock	11,430
	325,513
INCREASE(DECREASE) IN WORKING CAPITAL	$ (588,697)
CHANGES IN ELEMENTS OF WORKING CAPITAL	
Increase (Decrease)	
Current assets-	
Cash	$ (142,781)
Accounts receivable (net)	763,683
Notes receivable	13,871
Inventories	449,410
Prepaid expenses	104,385
	1,188,568
Current liabilities-	
Advances from finance company	706,710
Trade notes payable	795,000
Current portion of long-term debt	97,034
Current portion due under capitalized lease obligations	46
Accounts payable	25,937
Accrued liabilities	152,745
Accrued income taxes	(207)
	1,777,265
INCREASE (DECREASE) IN WORKING CAPITAL	$ (588,697)

See accompanying notes to the financial statements.

PRECISION POLYMERS, INC. AND SUBSIDIARIES

NOTES TO THE FORM 10-Q

1. ACCOUNTING POLICIES

INCOME TAXES

Tax effect of loss is recognized in the loss period to the extent of any deferred taxes.

2. ACQUISITIONS

On March 19, 1976, a wholly-owned subsidiary of the Company acquired certain machinery, equipment and leasehold improvements for $300,000. The purchase price was financed through a loan from a finance company in the amount of $350,000 bearing interest at 5 1/4 percent above the prime rate. The loan is repayable at the rate of $2,000 weekly commencing May 10, 1976 with the balance due on July 15, 1977. Interest is payable monthly commencing April 1, 1976. The machinery and equipment purchased is collateral for the loan.

3. INVENTORIES

Inventories consist of:

	1976
Raw materials and work in process	$ 608,687
Finished goods	2,344,181
	$2,952,868

4. EARNINGS PER CAPITAL SHARE

Earnings per capital share are computed on the weighted average number of shares outstanding during each period of 1,160,079 and 1,251,364 for 1976 and 1975, respectively. The assumed exercise of stock options would not result in a material dilution of earnings per share in both 1976 and 1975.

5. OPERATIONS

During 1973 and continuing through 1974, a shortage of PVC resin, a petrochemical product which is a major raw material used in the manufacture

PRECISION POLYMERS, INC. AND SUBSIDIARIES

NOTES TO THE FORM 10-Q
(Continued)

5. OPERATIONS (Continued)

of a large portion of the Company's products, resulted in substantial reduction in the production of the Company's products. It became expedient to resell some of the Company's limited quantities of PVC resin, contractually commited to it by one of the several suppliers to nonrelated purchasers. For the thirteen weeks ended June 27, 1976 and June 29, 1975, sales of resin and compound totaled $85,870 and $267,203, respectively.

6. INCOME TAXES AND OPERATING LOSS CARRY-FORWARD

Provision for income taxes is summarized as follows:

	June 27, 1976	December 31, 1975
Current - State and local	$ -	$ 18,000
Deferred - Federal	(43,500)	$153,000
- State and local	-	17,000
	(43,500)	170,000
	$ (43,500)	$188,000

In prior years' figures, the Company took benefit of a reduction of income taxes arising from carry forward of prior years' operating loss. At the year-end audit it was learned that the carry forward was for tax purposes only.

OTHER FINANCIAL INFORMATION

April 1976 8-K is incorporated by reference. May 1976 8-K is incorporated by reference.

In June, 1976, the Company reached an agreement with one of its major raw material suppliers to pay for raw materials received over an extended period. The Company issued a promissory note for $1,108,410.94 with interest at 2.5 percent over prime, payable in varying monthly installments over a 15-month period commencing July 1, 1976 and ending September 1, 1977. The promissory note is secured by a subordinate position in machinery and equipment and inventory.

1

SALE OF UNREGISTERED SECURITIES (DEBT AND EQUITY)

None

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Precision Polymers, Inc.
(Registrant)

Date August 10, 1976

Marvin A. Rosenblum
President

Date August 10, 1976

William Malia
Senior Vice President-Finance

For S.C. 11/18

1975AR 3/76

5.12

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SECURITIES AND EXCHANGE COMMISSION
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INFORMATION SERVICES

FORM 10-K

ANNUAL REPORT UNDER SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934.

For the fiscal year ended December 31, 1975 Commission file number 1-6008

PRECISION POLYMERS, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

22-1826422
(I.R.S. Employer Identification No.)

1136 Route 22, Mountainside, New Jersey
(Address of principal executive offices)

07092
(Zip Code)

Registrant's telephone number, including area code

(201) 654-4400

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Capital Stock, $ .05 par value	Boston Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:

None
(Title of class)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes X . No __________.

III

Statement for the Record, dated December 14, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(In Bankruptcy)

In the Matter
of

PRECISION POLYMERS INC., PRECISION THERMOPLASTICS, FLO-TITE PLASTICS, INC.,

Debtors

No. 76 B 2358
76 B 2359
76 B 2360

Poughkeepsie, New York

December 14, 1976

STATEMENT FOR THE RECORD

B E F O R E:

HON. JOHN J. GALGAY,
Referee In Bankruptcy

RAYVID REPORTING SERVICE
CERTIFIED STENOTYPE REPORTERS
150 NASSAU STREET
NEW YORK, N. Y. 10038
CORTLANDT 7-3877
3878

APPEARANCES:

MESSRS. LEVIN & WEINTRAUB
Attorneys for Debtors
225 Broadway
New York, New York
BY: CHARLES WEINTRAUB, ESQ., Of Counsel

MESSRS. KRAUSE, HIRSCH & GROSS
Attorneys for Robintech, Inc., et al
41 East 42nd Street
New York, New York
BY: SHELDON LOWE, ESQ., Of Counsel
-and-
JOHN SCHEFFEL, ESQ., Of Counsel

BERNARD RACKEAR, P.C.
Attorney for Precision Polymers, Inc., et al
25 West 43rd Street
New York, New York

- - - - -

ALSO PRESENT:

JAY R. BENENSON, ESQ.
Attorney for Creditors Committee
% Arthur Winston
6 East 45th Street
New York, New York

RICHARD WHITING

- - - - -

PROCEEDINGS

THE JUDGE: This is a statement for the record.

An adjourned hearing date on the

challenge to the venue in this Chapter XI proceeding was held approximately a week ago and was scheduled to be completed today.

Counsel met with the Court early this afternoon and a discussion ensued with respect to the possibility of resolving an existing anti-trust suit which is pending before Judge Whitman Knapp of the United States District Court for the Southern District of New York.

The purpose of pursuing that discussion was that if that was amicably resolved, Sheldon Lowe, Counsel for the moving creditors would withdraw his challenge to the venue, and under the authority of the Bankruptcy Act, the Court, on its own, if it was satisfied that itwas in the interests of justice and the convenience of the parties, could retain the case in this venue, even though it was clear that it was filed in the wrong venue.

The parties have had substantial

discussions to which the Court participated to some small extent.

The present posture of the matter is that the three moving creditors who are Defendants in the anti-trust suit aforementioned, appear willing to pay $250,000 in exchange for the dismissal of the anti-trust lawsuit with prejudice.

The terms of payment proposed by the three moving Defendants, is the payment of $100,000 when the Order of Dismissal and the withdrawal of the challenge to the venue is signed and when such dismissal Order becomes final and non-appealable; and thereafter at thirty day intervals $50,000 will be paid on each such date.

MR. BENENSON: The offer will remain in full force and effect until January 15, 1977 at 4:00 o'clock p.m., in order to permit the Creditors Committee to convene, analyze the offer and make recommendations.

THE JUDGE: In the meantime the parties are going to try and resolve any mechanical problems regarding the bringing on of the Order, the fixing of the notices and tentatively the date of January 5th is contemplated to be the date when the offer and compromise will be brought on to be heard before this Court.

MR. LOWE: So there is no misunderstanding, I am going to insist upon a conditional submission of documents in connection with the venue motion, if for any reason the compromise falls through.

Mr. Weintraub - -

MR. WEINTRAUB: What do you mean insist upon? - - We are both moving forward in good faith.

MR. LOWE: I want it tried and disposed of. You have the Fifth. There is no reason why we can't use the 205, that raft of Affidavits that you submitted - -

MR. WEINTRAUB: Let's not get

into that.

THE JUDGE: Talk it over between you, don't make it part of this thing.

MR. WEINTRAUB: We will settle this.

MR. BENENSON: Don't complicate it.

MR. LOWE: You may have a creditor in Oshkosh who will be here on the 5th of January who will wonder why you will settle a $2,000,000 lawsuit for $250,000.

MR. BENENSON: Somebody will explain it to them.

MR. LOWE: I will withdraw the condition.

THE JUDGE: Why don't you see that a record is made of that promptly and made available to Counsel for the Creditors Committee.

MR. WHITING: When you refer to dismissal of the suit you refer to the anti-trust suit, what is contemplated here is the dismissal of the Complaint before Judge Knapp, number - - does anybody know the Docket Number?

MR. RACKEAR: I think it is 76 Civ. 1746 but I will check it.

Yes, that's it.

MR. WHITING: What we referred to a moment ago, namely, there is a counter-claim here for some $9,000 filed on behalf of one of the Defendants, Plasterline. It is not within the contemplation of the parties that that counter-claim will be dismissed with prejudice in the anti-trust suit; rather, that it will be dismissed without prejudice and that claim, which is already filed as a Proof of Claim in the Bankruptcy proceeding, will be dealt with just like any other unsecured claim.

MR. WEINTRAUB: Without prejudice against our rights, the Debtors' rights against the claim.

THE JUDGE: To object to the claim.

Make a copy of this available to all parties.

MR. RACKEAR: I think we need a copy for Judge Knapp.

- - - - - -

IV

Order to Show Cause, dated December 28, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----------------------------------x

In re

PRECISION POLYMERS, INC.,
PRECISION THERMOPLASTICS CORP.,
FLO-TITE PLASTICS CORP.,

Debtor.

-----------------------------------x

In Proceedings for
an Arrangement

Nos. 76 B 2358
76 B 2359
76 B 2360

ORDER TO SHOW CAUSE

UPON the annexed application of the debtors in possession; sufficient cause appearing therefor; and no adverse interest being represented; it is

ORDERED that Robintech, Incorporated, Shintech, Incorporated and Plastiline, Inc., the members of the Creditors' Committee and all interested parties show cause before the Honorable John J. Galgay, Bankruptcy Judge, in Room 234, United States District Court House, Southern District of New York, Foley Square, New York, New York on the 5th day of January, 1977 at 10:00 A.M. in the forenoon or as soon thereafter as counsel can be heard, why an order should not be entered authorizing the acceptance by the debtors in possession of an offer to compromise a certain litigation entitled, "Precision Polymers, Inc. and Precision ThermoPlastics Corp. v. Robintech Incorporated, Shintech Incorporated, and Plastiline, Inc., 76 Civ. 1746 (W.K.)" for the sum of $250,000 payable as set forth in the annexed application; and directing the dismissal, with prejudice of the pending motion to dismiss or transfer the arrangement proceedings; and it is further

ORDERED that service by mail of a copy of this order and the application upon which it is granted upon

Krause, Hirsch & Gross, attorneys for Robintech, Incorporated, Shintech, Incorporated and Plastiline, Inc. at 41 East 42nd Street, New York, New York, upon Jay Benenson, Esq. at 744 Broad Street, Newark, New Jersey, attorney for the Creditors' Committee herein and upon all members of the duly elected Creditors' Committee at their respective addresses on or before December 29, 1976 shall be deemed good and sufficient service; and it is further

ORDERED that any party or other person wishing to be heard in opposition to the within application shall serve answering papers upon Levin & Weintraub, attorneys for the debtors in possession, at least three (3) full business days before the day hereinabove fixed for the hearing of the within application.

Dated: New York, New York
December 28, 1976

John J. Galgay
Bankruptcy Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----------------------------------x

In re	In Proceedings for an Arrangement Nos. 76 B 2358 76 B 2359 76 B 2360
PRECISION POLYMERS, INC., PRECISION THERMOPLASTICS, INC., FLO-TITE PLASTICS CORP.,	
Debtors.	APPLICATION FOR ORDER TO SHOW CAUSE

-----------------------------------x

TO THE HONORABLE JOHN J. GALGAY, BANKRUPTCY JUDGE:

The application of the above-captioned debtors in possession respectfully represents and alleges:

1. Heretofore and on October 20, 1976, the debtors filed petitions for relief under Chapter XI of the Bankruptcy Act and were continued in the operation of their businesses as debtors in possession.

2. At the first meeting of creditors held on November 30, 1976 a committee of creditors was nominated and elected, but the entry of an order designating the committee as official has been delayed by the direction of this court.

3. On November 24, 1976, an order to show cause was filed by this court calling a hearing for December 6, 1976 to consider an application of Robintech, Incorporated, Shintech, Incorporated and Plastiline, Inc. (hereinafter "Robintech et al.") to dismiss the Chapter XI proceedings or in the alternative, to transfer it to another jurisdiction by reason of alleged improper venue.

4. A trial of the issues raised by this motion was commenced on December 6, 1976 and was continued until December 14, 1976.

5. On December 14, 1976 and prior to the continuation of the trial, counsel for the parties had discussions as to

a possible settlement of a treble damage, anti-trust litigation entitled "Precision Polymers, Inc. and Precision Thermoplastics Corp. v. Robintech Incorporated, Shintech, Incorporated and Plastiline, Inc., 76 Civ. 1746 (W.K.)" pending before the Honorable Whitman Knapp in the United States District Court for the Southern District of New York. The purpose of pursuing the settlement discussions in relation to the anti-trust litigation was to obtain immediate operating capital for the debtors in possession and in conjunction therewith to remove the challenge to venue which had been lodged by Robintech et al.

6. After various off the record discussions in chambers, it was suggested that a settlement could be reached by Robintech et al. paying $250,000 to the debtors in possession in satisfaction and release of the pending anti-trust suit. Richard Whiting, Esq. informed the court that he would have to make phone calls to various of the principals involved before the offer could be formalized. He thereafter returned to chambers and advised the court and all of the interested parties that Robintech et al. would settle the anti-trust litigation for $250,000 upon the condition that $50,000 be paid upon the hearing of the order dismissing the anti-trust action and $50,000 per month thereafter for the next consecutive four months. After further discussion it was suggested that $100,000 should be paid upon the entry of an order of dismissal and thereafter $50,000 per month for the next three consecutive months.

7. Mr. Whiting informed all parties in the court that he would have to make another phone call, and thereafter returned to advise that the settlement terms proposed were acceptable to Robintech et al. Mr. Duffy, representing Plastiline, Inc., advised that the settlement terms proposed were acceptable to his client.

8. Based on all of the foregoing discussions the court made a statement for the record, the minutes of which are annexed hereto as Exhibit "A". As indicated by the court on page three,

> "Counsel met with the Court early this afternoon and a discussion ensued with respect to the possibility of resolving an existing anti-trust suit which is pending before Judge Whitman Knapp of the United States District Court for the Southern District of New York.
>
> The purpose of pursuing that discussion was that if that was amicably resolved, Sheldon Lowe, Counsel for the moving creditors would withdraw his challenge to the venue..."

9. The court indicated that a hearing should be brought on to consider the compromise for January 5, 1977 at 10:00 A.M.

10. Applicants,based on discussion with their own counsel and based on their personal knowledge of previous anti-trust litigation with Robintech et al., is well aware of the time, money and effort which will have to be expended if the anti-trust litigation were to continue to final conclusion through trial. Applicants are also aware of the vagaries of litigation and the possibility that notwithstanding its belief in a meritorious action that a court or jury might ultimately decide against applicants.

11. More important, and as applicants have expressed to its Creditors' Committee, applicants are in need of immediate operating capital and have a strong desire to get on with the business of operating the debtors on a profitable basis in order to emerge from the Chapter XI proceeding. It is applicants' belief that a continuation of the anti-trust litigation

would be detrimental to the ongoing business of the debtors in possession in that the chief executive officers of the debtors in possession would have to spend substantial time on the litigation rather than on the day-to-day business affairs of the debtors in possession.

12. Finally, it is apparent that the pending motion to dismiss or transfer this proceeding is of great concern to applicants. While applicants' counsel have advised them that the risk of dismissal of the proceeding is minimal, it is within the power of the Court, in the exercise of its discretion, to transfer the proceedings to the District of New Jersey or the District of North Carolina. Applicants are concerned that such a transfer would adversely effect its financing during the arrangement proceedings and might precipitate adjudications in bankruptcy. The proposed settlement will remove the objections to venue, and will insure the continuance of these proceedings in this form. Applicants view this as another important consideration in their approval of the offer.

13. Applicants desire to provide for notice to each member of the Creditors' Committee which has been duly selected by an appropriate notice to all of the creditors entitled to notice pursuant to Rule 11-24(d) of the Rules of Bankruptcy Procedure.

14. In addition, applicants have been informed by their counsel that Robintech et al. has informally indicated its withdrawal of its offer of settlement notwithstanding the fact that no formal notice has been received by either applicant or counsel.

15. The offer was in no way conditional, except upon approval of this court and the Creditors' Committee prior to January 15, 1977 at 4:00 P.M. (See page 4 of the minutes).

Approval of the Creditors' Committee has been obtained. Annexed hereto as Exhibit "B" is a letter from the Secretary to the Creditors' Committee indicating that the Creditors' Committee has accepted the offer of compromise.

WHEREFORE applicants pray for the annexed order calling a hearing to consider the compromise and settlement, and for such other and further relief as is proper.

Dated: New York, New York
Dec 28 , 1976

PRECISION POLYMERS, INC.
PRECISION THERMOPLASTICS, INC.
FLO-TITE PLASTICS CORP.

BY ______________________
Marvin Rosenblum, President

LEVIN & WEINTRAUB

BY ______________________
A Partner

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(In Bankruptcy)

In the Matter
of

PRECISION POLYMERS INC., PRECISION THERMOPLASTICS, FLO-TITE PLASTICS, INC.,

Debtors

No. 76 B 2358
76 B 2359
76 B 2360

Poughkeepsie, New York

December 14, 1976

STATEMENT FOR THE RECORD

BEFORE:

HON. JOHN J. GALGAY,

Referee In Bankruptcy

RAYVID REPORTING SERVICE
CERTIFIED STENOTYPE REPORTERS
150 NASSAU STREET
NEW YORK, N. Y. 10038
CORTLANDT 7-3877
3878

A P P E A R A N C E S:

MESSRS. LEVIN & WEINTRAUB
Attorneys for Debtors
225 Broadway
New York, New York
BY: CHARLES WEINTRAUB, ESQ., Of Counsel

MESSRS. KRAUSE, HIRSCH & GROSS
Attorneys for Robintech, Inc., et al
41 East 42nd Street
New York, New York
BY: SHELDON LOWE, ESQ., Of Counsel
-and-
JOHN SCHEFFEL, ESQ., Of Counsel

BERNARD RACKEAR, P.C.
Attorney for Precision Polymers, Inc., et al
25 West 43rd Street
New York, New York

- - - - -

A L S O P R E S E N T:

JAY R. BENENSON, ESQ.
Attorney for Creditors Committee
℅ Arthur Winston
6 East 45th Street
New York, New York

RICHARD WHITING

- - - - -

P R O C E E D I N G S

THE JUDGE: This is a statement for the record.

An adjourned hearing date on the

challenge to the venue in this Chapter XI proceeding was held approximately a week ago and was scheduled to be completed today.

Counsel met with the Court early this afternoon and a discussion ensued with respect to the possibility of resolving an existing anti-trust suit which is pending before Judge Whitman Knapp of the United States District Court for the Southern District of New York.

The purpose of pursuing that discussion was that if that was amicably resolved, Sheldon Lowe, Counsel for the moving creditors would withdraw his challenge to the venue and under the authority of the Bankruptcy Act, the Court, on its own, if it was satisfied that it was in the interests of justice and the convenience of the parties, could retain the case in this venue, even though it was clear that it was filed in the wrong venue.

The parties have had substantial

discussions to which the Court participated to some small extent.

The present posture of the matter is that the three moving creditors who are Defendants in the anti-trust suit aforementioned, appear willing to pay $250,000 in exchange for the dismissal of the antitrust lawsuit with prejudice.

The terms of payment proposed by the three moving Defendants, is the payment of $100,000 when the Order of Dismissal and the withdrawal of the challenge to the venue is signed and when such dismissal Order becomes final and nonappealable; and thereafter at thirty day intervals $50,000 will be paid on each such date.

MR. BENENSON: The offer will remain in full force and effect until January 15, 1977 at 4:00 o'clock p.m., in order to permit the Creditors Committee to convene, analyze the offer and make recommendations.

THE JUDGE: In the meantime the [illegible]ties are going to try and resolve any mechanical problems regarding the bringing on of the Order, the fixing of the notices and tentatively the date of January 5th is contemplated to be the date when the offer and compromise will be brought on to be heard before this Court.

MR. LOWE: So there is no misunderstanding, I am going to insist upon a conditional submission of documents in connection with the venue motion, if for any reason the compromise falls through.

Mr. Weintraub - -

MR. WEINTRAUB: What do you mean insist upon? - - We are both moving forward in good faith.

MR. LOWE: I want it tried and disposed of. You have the Fifth. There is no reason why we can't use the 205, that raft of Affidavits that you submitted - -

MR. WEINTRAUB: Let's not get

into that.

THE JUDGE: Talk it over between you, don't make it part of this thing.

MR. WEINTRAUB: We will settle this.

MR. BENENSON: Don't complicate it.

MR. LOWE: You may have a creditor in Oshkosh who will be here on the 5th of January who will wonder why you will settle a $2,000,000 lawsuit for $250,000.

MR. BENENSON: Somebody will explain it to them.

MR. LOWE: I will withdraw the condition.

THE JUDGE: Why don't you see that a record is made of that promptly and made available to Counsel for the Creditors Committee.

MR. WHITING: When you refer to dismissal of the suit you refer to the anti-trust suit, what is contemplated here is the dismissal of the Complaint before Judge Knapp, number - - does anybody know the Docket Number?

MR. RACKEAR: I think it is 76 Civ. 1746 but I will check it.

Yes, that's it.

MR. WHITING: What we referred to a moment ago, namely, there is a counter-claim here for some $9,000 filed on behalf of one of the Defendants, Plasterline. It is not within the contemplation of the parties that that counter-claim will be dismissed with prejudice in the anti-trust suit; rather, that it will be dismissed without prejudice and that claim, which is already filed as a Proof of Claim in the Bankruptcy proceeding, will be dealt with just like any other unsecured claim.

MR. WEINTRAUB: Without prejudice against our rights, the Debtors' rights against the claim.

THE JUDGE: To object to the claim.

Make a copy of this available to all parties.

MR. RACKEAR: I think we need a copy for Judge Knapp.

- - - - - -

Exhibit B

STATE OF NEW YORK,
CITY OF
COUNTY OF } SS:

, being duly sworn, deposes and says that
he is in the within action; that he has read
the foregoing and knows the contents thereof; that the same is true
to h own knowledge, except as to the matters therein stated to be alleged on information and belief, and
that as to those matters he believes it to be true.

Sworn to before me, this
day of 19 }

STATE OF NEW YORK,
CITY OF
COUNTY OF } SS:

, being duly sworn, deposes and says that
he is the of the herein
that he has read the foregoing and knows the contents thereof,
and that the same is true to h own knowledge, except as to the matters herein stated to be alleged upon
information and belief, and as to those matters he believes it to be true.

Deponent further says that the reason this verification is made by the deponent and not by the
is because it is a corporation,
and deponent an officer thereof, to wit its

Sworn to before me, this
day of 19 }

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK
CITY OF
COUNTY OF } SS:

being duly sworn, deposes and says, that he is over
the age of years. That on the
day of 19
at No.
in the
he served the foregoing
upon
by delivering to and leaving personally with said

a true copy thereof.

Deponent further says that he knew the person
served as aforesaid, to be
the person mentioned and
described in said
as the therein.

Sworn to before me this
day of 19 }

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK
CITY OF
COUNTY OF } SS:

, being duly
sworn, deposes and says that he is
the attorney for
the above named herein.
That on the day of
19 he served the within
upon
the attorney for the above named
by depositing a true copy of the same securely enclosed in a post-paid wrapper in the Post-Office — a Branch Post-Office — a Post-Office Box regularly maintained by the United States Government at
in said County of
directed to said attorney for the
at No.
N. Y., that being the address within the State designated by h for that purpose upon the preceding papers in this action or the place where h then kept an office between which places there then was and now is a regular communication by mail.

Deponent is over the age of years.

Sworn to before me this
day of 19 }

Index No. 76 B 2358-60 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re

PRECISION POLYMERS, INC.,
PRECISION THERMOPLASTICS CORP.,
FLO-TITE PLASTICS CORP.

Debtors.

ORDER TO SHOW CAUSE

LEVIN & WEINTRAUB

Attorneys for Debtors.

225 BROADWAY
BOROUGH OF MANHATTAN
NEW YORK, N. Y. 10007

(212) 962-3300

Sir:

Please take notice that the within is a true copy of

a

this day duly entered and filed in the office of the clerk

of the

Dated,

LEVIN & WEINTRAUB

Attorneys for

225 BROADWAY
BOROUGH OF MANHATTAN
NEW YORK, N. Y. 10007

To

Attorney for

Sir:

Please take notice that an order, of which the within is a true copy, will be presented for settlement and signature herein to Mr. Justice

at

on the day of 19

at o'clock in the forenoon, or as soon thereafter as counsel can be heard.

Dated,

LEVIN & WEINTRAUB

Attorneys for

225 BROADWAY
BOROUGH OF MANHATTAN
NEW YORK, N. Y. 10007

To

Attorney for

V

Transcript of Proceedings, dated January 5, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(In Bankruptcy)

In the Matter
of

PRECISION POLYMERS
PRECISION THERMOPLASTIC
FLO-TITE PLASTICS CORP.

Debtor

76 B 2358
No. 76 B 2359
76 B 2360

U.S. Courthouse
Foley Square
New York, New York

January 5, 1977

OSC re: compromise

B E F O R E:

HON. JOHN J. GALGAY,

Bankruptcy Judge

RAYVID REPORTING SERVICE
CERTIFIED STENOTYPE REPORTERS
150 NASSAU STREET
NEW YORK, N. Y. 10038
CORTLANDT 7- 3877
3878

APPEARANCES:

LEVIN & WEINTRAUB, ESQS.,
Attorneys for Debtor,
225 Broadway
New York, New York

BY: CHARLES WEINTRAUB, Esq., of Counsel
-- and -
DANIEL ZIMMERMAN, Esq., of Counsel.

KRAUSE, HIRSCH & GROSS, ESQS.,
Attorneys for moving creditors,
41 East 42nd Street
New York, New York

BY: SHELDON LOWE, Esq., of Counsel
- and -
JOHN F.SCHEFFEL, Esq., of Counsel.

BERNARD RACKEAR, ESQ.,
Co-Counsel for Debtor,
25 West 43rd Street
New York, New York

JAY BENENSON, ESQ.,
Attorney for unofficial creditors
committee,
6 East 45th Street
New York, New York.

- - -

THE JUDGE: Where are we?

MR. WEINTRAUB: Good morning, Judge. We have brought on an application by order to show cause which has been served and filed with this court, order to show cause dated December 28, by this court bringing on a hearing for today's date to approve the offer of settlement which was made by Robintech, Shintech, Inc. and Plastiline Inc. To settle a controversy that has been pending in the United States District Court, Southern District of New York before Judge Knapp for a quarter of a million dollars and also at the same time to remove the challenged venue that had been lodged by these defendants before this court.

As you will recall there were settlementdiscussions had between counsel at the last hearing before this court.

Based on those we went in chambers and put on the record what we thought was a settlement and in the record of those minutes Your Honor had indicated that January 5, today's date, was tentatively set as the date for bringing on a hearing on notice as we may see fit to approve the offer which had been made and which was by the terms of the offer in no way conditional in any method or manner except that Mr. Benenson had asked as part of the settlement that the creditors committee have an opportunity to convene and that the offer should remain irrevocable until January 15th in order to give the committee time to review and determine whether the settlement was in the best interest of the creditors committee.

At that time, there was no objection by any of counsel representing any of the defendants. I believe it was either on the next day or the day thereafter that I did get a telephone call from Mr. Lowe informing me that I believe Robintech was not prepared to go forward with the offer based on the fact that offer that had been made had not been authorized by the appropriate parties at Robintech.

That was, I believe, the entire basis as far as discussion. I asked Mr. Lowe if he was going to inform the court, he told me he was. I asked if we were

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going to get any additional formal notice, he said he didn't believe so.

We didn't get any formal notice. I informed Mr. Benenson that Robintech apparently was attempting to withdraw its offer. We have never received any formal notice nor have we been advised that the other two defendants which are Shintech Inc. and Plastiline who were represented by counsel are withdrawing the offer.

Plastiline was present by its counsel in your chambers, did indicate that they were accepting the offer as well.

I am sure, Your Honor will recall that Mr. Whiting on two separate occasions went out to make phone calls, did come back to the court and indicate that the initial offer was acceptable, a quarter of a million, provided that it was paid in installments of $50,000, some discussion ensued, after which it was suggested that the offer be amended so $100,000 be paid upon a dismissal of the antitrust action in the district court and three additional $50,000 installments be paid.

Mr. Whiting said he would have to contact his people, he did that late in the afternoon, came back and said that was acceptable.

At which time, Your Honor dictated a statement for the record which is part of our moving papers which in no way contains as I indicated earlier any conditions in it.

It was made clear on the record without objection of counsel of any parties that the purpose of pursuing that discussion was that if it was amicably resolved, that Sheldon Lowe, counsel for moving creditors, would withdraw his challenge to the venue, I am reading from page 2 of the minutes of the hearing in chambers, dated December 14, 1976.

Further on in those minutes, Judge, on page 5, the judge talking said as follows.

."In the meantime, the parties are going to try and resolve any mechanical problems regarding the bringing on of the order, the fixing of the notices and tentatively the date of January 5th is contemplated to be the date when the offer in compromise would be brought on to be heard before this court."

Mr. Lowe then responded, so there is no misunderstanding, I am going to insist upon a conditional submission of documents in connection with the venue motion. If for any reason the compromise falls through. It is our position, Judge, that there was an offer made on the record which was accepted by the debtor in possession subject to a hearing being held before this court and subject to approval by the creditors committee.

It is also our position that one of the moving -- one of the major reasons why the debtor in possession was willing to settle this for a quarter of a million dollars was the fact that the venue motion or the challenge to the Chapter XI petitions which had been lodged by the defendants would be withdrawn and the case would be able to proceed in the Southern District of New York.

The purpose as we previously indicated to you was that we were concerned with financing if this case were in -- were going to this judge or some other jurisdiction and also as we indicated the debtor was in need and still is in need of infusion of capital and we believe that the best interests of the estate would be served by a settlement at this time so there would not be protracted litigation.

The purpose of the order to show cause and the hearing today was to attempt to comply with what we thought was the mandate of that court which was to bring on a hearing to have that approved by the creditors committee and then to take whatever steps may be necessary if in fact the defendants have withdrawn their offer.

I received an answer this morning from the defendants which deny certain allegations which are clearly contrary to the testimony -- I shouldn't say testimony, to the record that was made on December 14th.

Specifically, the defendants deny that the purpose of pursuing the settlement discussions was to remove the challenge to venue which had been lodged by Robintech.

That flies in the face of both Your Honor's statement and Mr. Lowe's statement contained in the record which I read a few minutes ago.

Further, the defendants deny paragraph 9, of our moving papers which state that the court indicated that a hearing should be brought onto consider the compromise for January 5, 1977, at 10 a.m.

Page 5 of the minutes which I read a moment ago specifically indicates that the court did tentatively set January 5th as that date there was no objection by counsel to the moving creditors herein.

We believe, Judge, before anything can go further in this case on the challenge to venue or dismissal that, number one, we are entitled to a determination today or soon thereafter as you can make the determination that the debtor in possession is authorized to accept this subject to the statement by the creditors committee to us that they are willing to accept the settlement as proposed.

We further believe that we are entitled to an order directing Robintech to comply with the settlement if in fact Mr. Lowe or any of the other counsel are willing to state for the record that they are withdrawing the offer.

As I said there is no indication formally that the offer has been withdrawn. We alluded to it in the moving papers. Mr.

Lowe denies paragraph 14 of our moving papers which states that we have been informally advised that the settlement offer has been withdrawn.

There is a denial for that paragraph which is somewhat confusing, it can be taken to mean either that he is denying that it has been formally withdrawn, or that he is denying no formal notice has been received by counsel.

I assume Mr. Mowe can better talk to what he is stating in his denial than I can.

Without belaboring this point much further, Judge, I say that we did have discussions as you know, we all stayed here until a late hour.

I believe that the purpose of staying here for that hour was to reach a settlement and that when I suggested at about 5:30 that perhaps we leave the court and reconvene the next morning, it was Mr. Lowe and the court that insisted we stay since the court reporter was present and we could finalize that matter that night and get it finalized.

We still have great concern that if this case is removed to another jurisdiction it will spell the doom of the case and further we still believe that the quarter of a million dollar settlement is in the best interest of the estate, and this court is a court of equity, certainly has power to compel a settlement which has been reached by both parties in negotiating in good faith.

THE JUDGE: I will hear from Mr. -- perhaps I better hear from the creditors committee first.

MR. LOWE: If Your Honor pleases, I don't know if they have any formal standing before this court.

THE JUDGE: I will take that chance.

MR. LOWE: I will withdraw my objection, Your Honor.

THE JUDGE: What transpired from the time of the conference in my chambers to now?

MR. BENENSON: If it pleases the court, Your Honor, when I left Your Honor's chambers, I believe it was almost 6 o'clock that evening, I was with the chairman of the committee and both of us walked out with the firm belief that an offer of $250,000 firm had been made non-revocable, non-cancellable, that would remain in full force and effect until we had the opportunity to poll the rest of the committee since neither one of us wanted to take it upon ourselves that this is a decision of some magnitude and certainly we wanted the support or the thinking of the rest of that committee.

On that committee, of course, are the company representatives of fairly large companies. The secretary for the committee, Mr. William Otte, on December 27, 1976, in my absence wrote a letter to Levin

& Weintraub, which is Exhibit B of the moving papers, copies went to the chairman Alan Branagan and it stated as secretary of the creditors committee in the above-captioned matter the writer informally polled the committee with respect to the proposed settlement of $225,000.

I believe that was just a misprint, Your Honor, in the antitrust litigation. The vast majority of the committee voted in favor of the settlement provided the disposition of the funds generated from the settlement be subject to the committee's deliberation or the further order of the court.

That later provision, of course, only relates to the intercompany workings and the distribution of the funds.

I believe, Your Honor, when we left that that offer was not one that is subject to any change. I never heard of anybody formally or informally in your presence or in my presence after we left discuss the prospects of this offer being contingent upon anything else other than the contingency which I believe I read into the record, Your Honor, in the presence of both Mr. Lowe, Mr. Scheffel, I believe Mr. Whiting.

The only provision in the entire record appears to be one on page 4 which I stated the offer will remain in full force and effect until January 15, 1977, at 4 o'clock, p.m., in order to permit the creditors committee to convene, analyze the offer and make recommendations.

We then went off the record and Mr. Lowe said to me and said to the court, why the 15th, let's --

MR. LOWE: If Your Honor pleases, if counsel is going to make statements, I would like to have him sworn and I would like to have an opportunity to examine him.

THE JUDGE: I am going to recognize him as an officer of the court and I will give you the opportunity later if it becomes necessary.

MR. LOWE: Thank you.

MR. BENENSON: Mr. Lowe said in essence, January 15th, appeared too far down, then we went back on the record and Your Honor then moved that the date to -- January 5th, which we all agreed to.

Again, Mr. Lowe was concerned about moving this thing,expeditiously, and did not appear to be converned that this offer could possibly be withdrawn.

We have gone this far, I never received any notification other than through the offices of Levin & Weintraub, this offer or any conversation about this offer was now subject to being withdrawn.

To date, Your Honor, it is my clear recollection of that evening that there never was any discussion made or any inference there could be any other condition other than the one relating to the creditors committee.

THE JUDGE: Mr. Lowe.

MR. LOWE: If Your Honor pleases, I have interposed an answer with respect to the order to show cause which is the subject, the present subject before you.

THE JUDGE: I haven't seen it.

MR. LOWE: That answer was served by mail on Monday, Your Honor. I have a copy I think I can make available.

THE JUDGE: Will you hand up a copy, I haven't seen it.

MR. LOWE: Iprepared that answer, Your Honor, and I signed it in behalf of my firm and I stand upon the admissions and denials therein contained.

There is alleged as a defense to the application that it is legally insufficient. There was an offer made, Your Honor, and the offer was withdrawn.

That is clear and unmistakeable. The fact of the matter is there was never a binding settlement or in fact a conclusive offer. It was contemplated that there were other things to be done.

What happened was unexpected but there were other considerations and it was contemplated that there were matters that still remained to be resolved.

One of them was the form of the notice to be sent in connection with any hearing to consider an offer. Another problem was to whom the notice was to be given.

The discussions in fact contemplated a formal written agreement and stipulation which was never prepared and never signed.

The fact of the matter is we never got to that point. Immediately upon learning of the withdrawal of the offer and I believe that was the day following the discussion in chambers, I telephoned Mr. Weintraub and in behalf of all parties to that offer I informed him that the offer was withdrawn.

I informed him of the fact that I intended to bring that fact to Your Honor's attention. That I intended to communicate with you to arrange a mutually convenient time when we might speak to you so that I could impart the facts to you.

I invited Mr. Weintraub to attend that meeting and he declined to be present saying that, in effect, he didn't think it was necessary for him to be there.

To my mind that is a formal notice, Your Honor. It wasn't written in the sky by a plane and it wasn't etched in rock. That sounds as if he were formally notified of the withdrawal of the offer.

Responsible attorneys deal with each other on the telephone, Your Honor. The fact of the matter is we have before us a simple contract law proposition.

An offer was made, nobody acted to his detriment in reliance thereon. Nobody has argued any kind of estoppel. Your Honor. It was an offer that was withdrawn before any settlement was implemented and I think that the order to show cause and the application upon which it is based are legally insufficient.

I respectfully direct Your Honor's attention to the letter of William N. Otte dated December 27, 1976, directed to Levin & Weintraub. That was the letter that was read into the record by counsel.

Of course, there were several interpretations of that letter which I am sure Your Honor will disregard.

Let's take a look at the last sentence of that letter. It says the vast majority of the committee voted in favor of the settlement provided that disposition of the funds generated from the settlement be subject to the committee's deliberation or the further order of the court.

This committee never approved the offer that was made. As a matter of fact, they imposed a very serious condition so far as the debtor is concerned.

If Your Honor recalls, during the course of the hearing in your chambers, I suggested, I don't know whether it was on the record or off the record, that perhaps the creditors committee ought to have some control over that fund if the settlement ever came to being.

Counsel for the debtor and its president who was also present vehemently resisted that suggestion and Your Honor quite properly told me to mind my own business.

THE JUDGE: I am not sure that would be my --

MR. LOWE: Your Honor told me that that really wasn't anything that concerned me and you were quite right.

The fact of the matter is this committee never unconditionally accepted the offer that was made and withdrawn.

All of this, Your Honor, is a tempest in a teapot and it just convinces me of the desparation of these debtors if they have to resort to this kind of a proceeding Your Honor, to get $250,000 on a $23 million antitrust suit.

THE JUDGE: I don't think there is any question about their desparate financial plight or they wouldn't be in this court.

MR. LOWE: The desparation I was referring to, Your Honor, was the circumstances under which the petitions were filed in this court.

THE JUDGE: I would like to have both you and Mr. Lowe and Mr. Weintraub direct some comment to me as to what power do I have through an order to show cause to order the parties to complete such a settlement if there were such a settlement.

MR. WEINTRAUB: The order to show cause, first of all, Judge, is directed to the power of the court to authorize the debtor in possession to accept it and have a hearing on whether the offer is reasonable and in the best interests of the estate.

That I believe we are prepared to approve. As to the court's power, the court has exclusive jurisdiction over all of the assets of the debtor in possession whether it be by way of litigation, a sale of fixed assets, a sale of inventory or any sale of any assets under Section 311 of the Bankruptcy Act.

As to the power of the court to compel an offeror, we believe there is sufficient law which we can point to indicating that once an offer has been made, especially an offer which we believe in this situation was an irrevocable offer that the court does have power to compel by sufficient performance the compliance by the defendant with the offer.

The fact that Mr. Lowe has not alluded to a condition put in a letter by the creditors committee in no way changes the position vis-a-vis the two parties, being the defendants on the one hand and the debtor on the other hand. Mr. Otte's letter only indicates that the disposition of those funds is subject to further order of the court which would be the same situation in a sale of inventory, a sale of fixed assets whether we have a right to use money that comes in or not has nothing to do with his clients --

THE JUDGE: Basically, aren't you asking me to find or at least to act through an order to show cause and do something that really ought to be done through a plenary action if you are going to allege a breach of a contract.

MR. WEINTRAUB: That would be the next step, Judge. The first step is to have the offer which has been made approved by this court. I cannot put Mr. Lowe's complaint in breach of a contract which has not been approved by this court. If a plenary action is necessary or an application to Judge Knapp, that might be the next step.

The first step and the most important

step was that the debtor in possession be in full compliance with the settlement that was entered into in the hearing held before this court.

One of the specific requirements was that a hearing be brought on before this court for January 5th.

If there is some objection to the mechanics of that, I have not heard that raised exce pt by Mr. Lowe who I don't believe has standing to question the mechanics that we brought on for the hearing before this court, an order to show cause is brought on on notice to members of committee representing approximately a million dollars in debt.

The order to show cause dispenses with notice to creditors and complies with the rules to -- that allows notice to be sent to the creditors committee. That is what we have done.

We have spoken to numerous people about the pending settlement. I don't think any party objects to the settlement. We are prepared to go forward today, both on the reasonableness of the settlement, the need for the debtor to settle, the reasons which we have outlined in the application for the settlement, all of which are denied on knowledge and information by the defendants and properly so because they have no basic knowledge of why internally we might want to settle for $250,000.

When you say to me, is this the proper form to compel the defendants to comply, my answer is, Judge, we are not attempting to compel them at this point to comply.

This is a hearing to consider an offer and in the interim stay any question of the change of venue which was part and parcel of the settlement and part of the consideration which is clearly set forth on the record and which we are not trying to hide or in any way indicate to the court that this was not a prime consideration in the settlement, to keep this proceeding in the Southern District of New York before this court.

THE JUDGE: Mr. Lowe.

MR. LOWE: I must confess, Your Honor, that I haven't had an opportunity to think through the question you posed with respect to this court's jurisdiction.

I think before we reach that question I think we have to determine whether or not there was in fact a settlement which should be compelled, whatever the form should be. We have no settlement here, Your Honor, all we ever had was an offer that was withdrawn.

I neglected to mention earlier Your Honor, that it was contemplated by everybody, all parties involved, that the matter would have to be brought to Judge Knapp's attention before the offer could be implemented in any way.

That was never done because the

offer was withdrawn almost immediately after it had been made.

These discussions, Your Honor, however well intended they were, cannot be elevated to the dignity of a settlement. It is an offer that has been withdrawn.

THE JUDGE: Counsel, I am going to deny the relief requested in your order to show cause. I will refrain from passing on whether or not there was an entire settlement. I will leave that to either a future day or another court.

Mr. Lowe is quite right that a mention was made of a fact that someone would have to contact Judge Knapp with regard to any settlement that would involve a case under his domaine.

It is also true that between the time of the termination of the conference in my chambers and the return day of January 5th, the creditors committee was to be polled.

In any event, even if there were a settlement entered into, that settlement has been withdrawn so I find nothing before me and I am not going to order the relief requested.

MR. WEINTRAUB: So there is no confusion, all we are asking the court is to authorize the debtor in possession to accept an offer.

THE JUDGE: I am informed there is no offer.

MR. WEINTRAUB: We believe there is.

I am not asking you to pass on whether there is or not. The question before the court is, is the debtor in possession authorized to accept this offer and then we will seek whatever relief we deem necessary. I don't believe that we all sat around on that afternoon, to late in the afternoon, to come to the point where we can't at least have a hearing on the question of the ability of the debtor in possession to accept that offer.

You say you are denying the relief. Then I assume you are saying that the debtor in possession is not authorized to accept the offer.

I don't want to put words in your mouth, Judge, the relief we are requesting is that we be authorized to accept an offer and I don't think you can deny us that relief --

THE JUDGE: Mr. Weintraub, how can I authorize you to accept an offer if I am told by Mr. Lowe and the parties that were parties to the settlement agreement that they have withdrawn it.

MR. WEINTRAUB: That is the threshold question, can they withdraw that offer.

If you are making a decision from the bench that they can withdraw that offer and if that is the decision, then of course we will have to abide by that decision and do what we feel is appropriate from that decision.

THE JUDGE: You do whatever you think is appropriate.

MR. WEINTRAUB: I realize that.

I want the record clear on what is being denied to us. We are asking for the relief to accept the settlement of a controversy and if that is being denied on the basis that Your Honor finds there was no offer, at least I have something I can enter an order on deeming that the offer has been withdrawn and the court has authorized the defendants to withdraw that offer.

THE JUDGE: In the orderly course of an offer being authorized by this court, there would be some kind of a proposed settlement reduced to writing brought on notice to the creditors, brought on for a hearing, such as you contemplated for today and then when the court approved the settlement an order would be submitted, the order would be signed and then it would become an

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effective instrument from which parties could act or appeal.

MR. WEINTRAUB: We assume at that point that order would be taken up to Judge Knapp upon which he would enter a judgment dismissing the antitrust action.

The other conditions we alluded to or Mr. Lowe has alluded to, to my way of thinking are merely mechanical, overlooking the substance of was there a settlement or was there not a settlement.

If there was not a settlement on the day before it was withdrawn, then I don't know what a settlement is. There was a settlement to my way of thinking reached in those chambers before Your Honor.

I don't believe they can unilaterally withdraw that offer of settlement. There were no conferences contained in the record. I think the record is clear.

All I am asking for at the very least, I am asking for, is to be able to submit an order from which I can take whatever remedy I feel is appropriate.

THE JUDGE: You can appeal from my ruling on this order to show cause, if that is possible. I am going to avoid ruling on whether or not what transpired in my chambers was a completed agreement.

If you are going to bring a suit to that effect try the whole issue before some other court.

MR. WEINTRAUB: My problem is then, Judge, since the application is to approve a settlement and we have allegations why it should be settled.

Is a financing being made that it is not a reasonable settlement?

THE JUDGE: I am not saying that. My problem is that there is no offer of settlement before me. It has been withdrawn if there was one.

MR. WEINTRAUB: Then you are

deciding I have to believe, Judge, that the offer of settlement can be unilaterally withdrawn.

I am sorry to put Your Honor in this dilemma, I am in a dilemma representing a client.

THE JUDGE: Work your way out of it.

MR. WEINTRAUB: I thought we had, Judge. If Mr. Lowe or Mr. Whiting or any other counsel had conditions whereby they had to get back to a board of directors or another authorized officer of the company, those conditions should have been stated at 6 o'clock that evening before Your Honor said this is a statement for the record.

Mr. Whiting held himself out to be counsel for these companies or at least two of the corporations and Mr. Duffy, both of these gentlemen are in court today.

THE JUDGE: Those are all issues that you will try as to whether or not there is a breach of contract.

MR. WEINTRAUB: Your Honor, I am going to be met, if I bring an action for breach of contract,with the fact that this offer has never been approved by the court or never been denied by the court.

I can't base an action for breach of contract where we being the debtor in possession have not been authorized to accept that offer. That is the dilemma which is not entirely of our own making.

It is a dilemma that is brought about by I think the defendants refusal to make a motion to be relieved from that offer.

THE JUDGE: I am not here to instruct you how to pursue your remedies. I am here to try and decide things. I am deciding I am going to grant the relief you seek in your order to show cause.

Let's get on to the balance of the matters.

MR. LOWE: Judge, do I understand we have concluded the record with respect to the order to show cause which has been denied.

THE JUDGE: Yes.

MR. ZIMMERMAN: Your Honor, are you going to endorse motion denied?

THE JUDGE: I have already done that, application denied.

MR. ZIMMERMAN: So ordered.

THE JUDGE: So ordered.

That brings us to the problem of the venue action.

MR. LOWE: Yes, Your Honor, has set aside the balance of the day for that purpose. I think perhaps at the threshold we ought to dispose of a problem which might arise.

Mr. Rackear, who was general counsel to the debtors and is presently acting as special counsel under an order of this court was examined during the course of the 205 examination.

At that time, various minute books were marked for identification.

I requested and Mr. Rackear agreed to produce those minute books on a hearing in connection with the motion to transfer. He has had those minute books in court with him on the two previous occasions when we were here.

I asked him this morning whether or not he had those minutes books with him and he said no, he had not brought them, the minute books, with him because he didn't think we would ever reach that problem today.

There were also letters referred to during the course of Mr.Rackear's examination, namely letters written to the agent of the office building in which he has his offices directing that the names of the three debtors be placed on thebuilding directory.

He also agreed to furnish those letters and make them available today. He has had them here on previous occasions. I asked him this morning whether or not he had those letters with him today, and he said no, for the very same reason that he gave in connection with the minute books.

I respectfully direct or request a direction by this court to Mr. Rackear that the minute books that were marked for identification together with the three letters be in court today during the course of Mr. Rackear's examination.

I do intend to examine him.

THE JUDGE: Mr. Rackear, how soon can you produce those records?

MR. RACKEAR: Your Honor, a couple of moments, if I may.

Number one, those minute books were not marked for identification when I testified, that was done when Mr. Rosenblum testified.

The other thing is that Mr. Lowe and his associate have detailed notes of the contents of those minutes.

We would be perfectly willing to stipulate as to their accuracy. If you want me to bring the minutes then I will have to make a call and have them delivered.

We are perfectly willing to stipulate to the accuracy of those minutes.

THE JUDGE: Why can't you stipulate to the contents of those minutes?

MR. LOWE: If Your Honor pleases, we were denied an opportunity to examine those minutes.

MR. RACKEAR: That is not true.

MR. LOWE: Let me conclude my remarks.

THE JUDGE: One at a time.

MR. LOWE: The minutes were exhibited to us with the understanding that we would not have an opportunity to examine their contents and their substance. Notes were made as to the nature of the meetings held, Your Honor, where they were held and that is all we have.

I respectfully renew my request that Mr. Rackear be directed to produce those minute books which were marked for identification in court today, together with the three letters to which I adverted.

THE JUDGE: Mr. Rackear, do you want to refresh your memory, with the books marked for identification?

MR. RACKEAR: My memory is very fresh, they were marked for identification during the testimony of Mr. Rosenblum.

THE JUDGE: Did you deny the opportunity of Mr. Lowe to examine those books?

MR. RACKEAR: Absolutely not.

Mr. Lowe had his associate, Mr. Scheffel over at my office, he was there I believe at least two to three hours.

He read all of the minutes, all of the books were delivered to him. He was free to copy anything that he asked for and he did not copy minutes.

I offered Mr. Lowe at a previous meeting here, I told him that I would make a copy of all of those minutes and deliver them to him, he said no, he would rather have the books himself. It has become quite onerous to keep bringing the books here and keep taking them back at the whim and fancy of Mr. Lowe.

THE JUDGE: Had you subpoenaed those books?

MR. LOWE: No, in view of counsel's representation I didn't fee there was any necessity to subpoena them.

I have Mr. Scheffel seated beside me, Your Honor. I think, perhaps, a more accurate statement of what transpired would be made by him.

THE JUDGE: No, I am going to see if I can shorten this entire hearing by meeting with counsel in chambers.

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VI

Opinion of the Hon. John J. Galgay, Bankruptcy Judge, dated March 16, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter
-of-
PRECISION POLYMERS, INC.,
PRECISION THERMOPLASTICS CORP.,
FLO-TITE PLASTICS CORP.,

Debtors

In Proceedings for
an Arrangement Nos.

76 B 2358
76 B 2359
76 B 2360

MEMORANDUM OPINION

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JOHN J. GALGAY - Bankruptcy Judge

This matter arises from an application by Robintech, Inc., Shintech, Inc., and Plasciline, Inc., creditors of Precision Polymers, Inc. Precision Thermoplastics Corp., and Flo-Tite Plastics Corp., Chapter XI debtors in this proceeding, for an order to issue to the debtors to show cause why these proceedings should not be dismissed or, in the alternative, transferred to the District Court of New Jersey. An order to that effect was signed by Judge Roy Babitt on November 24, 1976. I heard this matter on December 6, 1976, and January 5, 1977.

The debtors filed their Chapter XI petitions in this district on October 20, 1976. An order providing for the joint administration of the three cases was signed on October 21,

1976. The moving creditors allege that the Chapter XI petitions were improperly filed in this district. The debtors have conceded that venue is laid in the wrong bankruptcy court, but argue that this court should retain jurisdiction over these proceedings pursuant to the discretionary power vested in this court by Congress. See Bankruptcy Rule 116.

Bankruptcy Rule 116(b)(2) provides that:

> When Venue Improper. If a petition is filed in a wrong district, the court may after hearing on notice to the petitioner or petitioners and such other persons as it may direct, dismiss the case or, in the interest of justice and for the convenience of the parties, retain the case or transfer it to any other district.

Rule 116, which supersedes Bankruptcy Act §32, incorporates the relevant case law establishing the criteria to be examined in determining whether a transfer, retention, or dismissal of a proceeding is in the interest of justice and for the convenience of the parties. In its decision to retain, dismiss, or transfer jurisdiction in cases where venue is improper, the court must weigh the expressed interest of all parties; the proximity to the court of creditors, debtors, and witnesses who are necessary to the administration of the proceeding; the locations of assets; and any other factors which may effect the speedy and economic administration of the estate. See In re: S.O.S. Sheet Metal Co., 297 F. 2d 32 (2d Circuit 1961); In re: Fairchild Puerto Rico, Inc., 333 F. Supp. 1187 (D. Del. 1971).

Having fully reviewed the facts as presented in the papers which have been submitted and two hearings, in light of the relevant criteria, I conclude that these proceedings should be transferred to the District Court of New Jersey. It is neither in the interest of justice nor the convenience of the parties that jurisdiction over these proceedings should be retained in this court or that these proceedings should be dismissed.

Precision Polymers, Inc., is a Deleware corporation with executive offices in Mountainside, New Jersey. Neither its principal place of business nor any of its assets have been or are located in this district. See Form 10k filed with the SEC by the debtor on March 30, 1976.

Precision Thermoplastics Corp., a Deleware corporation, has its executive offices at the site of its parent's, Precision Polymers, Inc., in Mountainside, New Jersey. It maintains other offices in North Carolina and California. Neither its principal place of business nor any of its assets have been or are located in this district.

Flo-Tite Plastic Corp., a Deleware corporation is located in California. It is a wholly owned subsidiary of Derbi Plastics Inc. Neither Flo-Tite's or Derbi Plastic's principal places of business, nor any of their assets, havebeen or are located in this district.

Moreover, the three debtors have minimal contacts with persons located in this district. Only two contacts are of sufficient importance to be considered in this decision. General Counsel to the debtors, Mr. Bernard Rackear, Esq., has an office at 25 West 43rd Street, New York, New York. Any suggestion that counsel's location will burden the administration of the estate in New Jersey is without basis. The travel time from midtown to the Federal Courthouse in Newark is similar to the time necessary to travel to this courthouse.

The other substantial contact of the debtors in this district is with Commercial Trading Company, Inc., [hereinafter "Commercial"] a New York corporation with offices in New York City. Before the Chapter XI petitions were filed, Commercial was financing the debtor's operations. Commercial has expressed a preference that the debtors be allowed to remain in possession of the estate. The willingness of Commercial to continue financing the operation of the debtors, if these proceedings are transferred to New Jersey, has been put in issue.

Commercial, apparently, does not favor the use of receivers to administer the estates of these Chapter XI debtors, However, the possible use of a receivership, a different method of administration for the estates of the Chapter XI debtors than has been used in these proceedings to date, is not a sufficient reason, by itself, to retain jurisdiction in this district. See In re: L.F. Popell Co., 221 F. Supp. 534 (SDNY 1963).

The debtors have argued that jurisdiction over these proceedings should be retained in order to facilitate the administration of an anti-trust proceeding brought in this district by the debtors Precision Polymers, Inc., and Precision Thermoplastics, Corp., against Robintech, Shintech, and Plastiline. That action is pending before the Honorable Whitman Knapp, District Judge. The defendants in that suit have moved for a transfer of the action to Texas. Judge Knapp has indicated that he would withold decision on that motion until I rule on the instant matter, but did not indicate what his decision would be if these proceedings were transferred. Affidavit of Bernard Rackear, Esq., p. 3, ¶5. It is within Judge Knapp's power to rule on the motion to transfer the anti-trust suit to Texas.

I only decide that the presence of that suit in the District Court is not, sufficient by itself, or in conjunction with any other factor, to warrant the retention of jurisdiction over these debtors in the interest of justice or convenience of parties.

The debtors have also argued that a dismissal of these proceedings would destroy a potential voidable preference action against a major creditor of the debtors, Sumitomo Shoji America, Inc. A transfer of these proceedings, rather than a dismissal, will preserve any possible action by the trustee in regard to this matter.

The docket of this court is filled with many large cases, which properly belong in this district, including W.T. Grant, R.E.A. Express, Universal Money Orders, and U.S.N. Co. Inc. As this court must devote a substantial amount of time to the supervision of these cases in addition to all other matters which properly come before this court, it would be imprudent of me to order the retention of jurisdiction in these proceedings when they properly belong in the District of New Jersey.

The principal offices of Precision Polymers Inc., and Precision Thermoplastics, Corp., are in Mountainside, New Jersey. The office of Flo-Tite's parent corporation are also in Mountainside, New Jersey. The Mountainside offices, the nerve center of the debtors' operations, are near the Newark Courthouse, the seat of the Federal District Court in New Jersey. A substantial majority of the books and records of the three corporations are kept in New Jersey; only duplicates of some records are kept in the

New York office of the General Counsel to the debtors. The vast majority of witnesses and personnel necessary to the administration of the debtors' estates are in New Jersey. In addition, a substantial number of the purported creditors are in New Jersey.

For the aforesaid reasons, these proceedings are transferred to the District Court of New Jersey.

SO ORDERED:

Dated: New York, New York
March 12, 1977

John J. Galgay
Bankruptcy Judge

VII

Memorandum and Order of the Hon. Whitman Knapp, U.S. District Judge, dated March 18, 1977

U.S. DISTRICT COURT
FILED
MAR 23 1977
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -

PRECISION POLYMERS, INC. and
PRECISION THERMOPLASTICS CORP.,

Plaintiffs,

- against -

ROBINTECH, INCORPORATED,
SHINTECH INCORPORATED and
PLASTILINE, INC.,

Defendants.

- -x

MEMORANDUM AND ORDER

76 Civ. 1746

76 B 2358
76 B 2359
76 B 2360

KNAPP, D.J.

After close consideration of the cases cited to us by defendants - appellees we adhere to the position we took at oral argument that the settlement agreement is a binding contract, so that the offer could not be withdrawn before there had been an opportunity for the condition subsequent to be realized. The fact that the essential terms of the settlement were formally placed on the record by the Bankruptcy Judge clearly distinguishes this case from Matter of Dolgin Eldert Corporation (1972) 31 N.Y.2d 1, 344 N.Y.S.2d 833, 286 N.E.2d 228.

It appears from the transcript of December 14, 1976 that Judge Calgay was acting to formalize the conclusion of negotiations that had taken place before him. It also appears from the affidavits before us and from statements of counsel at oral argument that these negotiations had been contemplated over

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several days with all sides respresented by experienced counsel and that the settlement was not hastily or unthinkingly arrived at. We further emphasize the fact that counsel for the unofficial creditors' committee stated on the record without contradiction that the agreement was to remain in full force and effect for one month so that the condition subsequent could be met.

The defendants-appellants also rely on In re Susquehanna Chemical Corp. (W.D. Pa. 1950) 92 F.Supp. 917, but that case concerned a judicial bankruptcy sale where the fact that a public sale was to be held in the expectation of obtaining the most favorable bid was inconsistent with finding that a particular bid had already been accepte so that it could not be withdrawn. No such circumstances are present here.1/

We perceive no issue of material fact in dispute to prevent our finding summarily that an enforceable contract was entered into, and to that extent we grant plaintiff-appellant's motion for summary judgment. With respect to the appeal from Judge Galgay's refusal to conduct proceedings to approve the terms of the settlement, we believe that question is now moot in light of our finding that there was an enforceable settlement agreement. Judge Galgay quite properly decided that he could not conduct such proceedings until the legal effect of the settlement had been determined. Accordingly, we dismiss the appeal as moot and remand the bankruptcy proceedings to Judge Galgay.

SO ORDERED.

Dated: New York, New York
March 18, 1977.

WHITMAN KNAPP, U.S.D.J.

FOOTNOTE

1/ The other cases relied on by defendants-appellants are equally inapposite. In ABC Trading Co. Ltd. v. Westinghouse Electric Supply Co. (E.D.N.Y. 1971) 382 F.Supp. 600, the court found that no binding settlement agreement had been made because a material term was left unresolved and because the agreement had not been reduced to a writing as the parties had contemplate Here, the statement for the record served as a writing and the essential terms of the settlement were agreed to. In Autera v. Robinson (D.C. Cir. 1969) 419 F.2d 1197, the court merely held that on the facts before it a hearing was necessary to determine whether the parties had intended to enter into a binding settlement agreement and that a summary enforcement proceeding was inappropriate. In the case before us the questions of whether a binding contract was formed can be decided as a matter of law on the basis of the December 14, 1976 transcript.

VIII

Order to Show Cause, dated March 23, 1977

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4/1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
MAR 24 1977
JOHN J. GALGAY
Bankruptcy Judge

In re: PRECISION POLYMERS, INC., PRECISION THERMOPLASTICS CORP., FLO-TITE PLASTICS CORP., Debtors	In Proceedings for an Arrangement Nos. 76 B 2358 76 B 2359 76 B 2360 ORDER TO SHOW CAUSE

3/31

Upon the annexed application of the debtors in possession; and after due consideration; and sufficient cause appearing therefor; and no adverse interest being represented; it is

ORDERED, that Robintech, Incorporated, Shintech, Incorporated and Plastiline, Inc., the members of the Official Creditors' Committee and all interested parties show cause before the Honorable John J. Galgay, Bankruptcy Judge, in Room 234, United States Courthouse, Foley Square, New York, New York on the 28th day of March, 1977 at 2:15 p.m. in the afternoon or as soon thereafter as counsel can be heard, why an order should not be entered authorizing the acceptance by the debtors in possession of an offer to compromise a certain litigation entitled, "Precision Polymers, Inc. and Precision ThermoPlastics Corp. v. Robintech Incorporated, Shintech Incorporated, and Plastiline, Inc., 76 Civ. 1746 (W.K.)" for the sum of $250,000 payable as set forth in the annexed application; and directing the dismissal, with prejudice of the motion by Robintech, Inc., Shintech, Inc. and Plastiline, Inc. for the dismissal or transfer of the arrangement proceedings; and it is further

ORDERED, that Robintech, Incorporated, Shintech, Incorporated and Plastiline, Inc., show cause before the

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Exhibit A Exhibit B

Honorable John J. Galgay, Bankruptcy Judge, in Room 234, United States Courthouse, Foley Square, New York, New York on the 28th day of March, 1977 at 2:15 p.m. in the afternoon or as soon thereafter as counsel can be heard why an order should not be entered pursuant to Rule 923 of the Rules of Bankruptcy Procedure and Rule 59 of the Federal Rules of Civil Procedure altering, amending and/or vacating the court's order of March 16, 1977 transferring the above entitled proceedings to the District of New Jersey on the ground that an enforceable settlement agreement was entered into between the parties which required Robintech, Inc., Shintech, Inc. and Plastiline, Inc. to withdraw with prejudice their motion to dismiss or transfer the above entitled arrangement proceedings; and it is further

ORDERED, that pursuant to Rule 802 of the Rules of Bankruptcy Procedure the running of the time for the filing of a notice of appeal in regard to this court's order of March 16, 1977 transferring the above entitled arrangement proceedings to the District of New Jersey is terminated as to all parties and will not commence to run until an order has been entered granting or denying the debtors' motion pursuant to Rule 923 of the Rules of Bankruptcy Procedure; and it is further

ORDERED, that the Clerk of the Court is hereby restrained from implementing the order of the Honorable John J. Galgay, Bankruptcy Judge, dated March 16, 1977 transferring the above entitled arrangement proceedings to the District of New Jersey until further order of this court; and it is further

ORDERED, that service of a copy of this order and the application upon which it is granted personally upon Krause, Hirsch & Gross, attorneys for Robintech, Incorporated, Shintech, Incorporated and Plastiline, Inc. at 41 East 42nd Street, New York, New York, and by mail upon Jay Benenson, Esq. at 744 Broad Street, Newark, New Jersey, attorney for the Official Creditors' Committee herein and upon all members of the Official Creditors' Committee at their respective addresses on or before 5:00 p.m., March 23, 1977 shall be deemed good and sufficient service; and it is further

ORDERED, that pursuant to Rule 914 of the Rules of Bankruptcy Proceedure, any party or other person wishing to be heard in opposition to the within application shall personally serve an answer thereto upon Levin & Weintraub, attorneys for the debtors in possession, by 3:00 p.m. on March 25, 1977.

Dated: New York, New York
March [illegible]/1977

Bankruptcy Judge

Exhibit A Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------------------------------X

In re:

PRECISION POLYMERS, INC.,
PRECISION THERMOPLASTICS CORP.,
FLO-TITE PLASTICS CORP.,

Debtors.

----------------------------------X

In Proceeding for
an Arrangement Nos.

76 B 2358
76 B 2359
76 B 2360

APPLICATION

TO THE HONORABLE JOHN J. GALGAY,
BANKRUPTCY JUDGE:

The application of the above-named debtors in possession, by their counsel, LEVIN & WEINTRAUB, respectfully represents:

1. Heretofore and on October 20, 1976, the debtors filed petitions for arrangement under Chapter XI of the Bankruptcy Act and were continued in the operations of their businesses and possession of their property as debtors in possession by order of the Court.

2. Thereafter, at the first meeting of creditors held on November 30, 1976, a committee of creditors was nominated and elected as an official Creditors' Committee and an order was thereinafter entered so designating them. Jay Benenson, Esq. was retained by said Committee to be its counsel, but no order of the Court has yet been entered so designating him.

3. On November 24, 1976, an Order to Show Cause was entered by this Court calling a hearing for December 6, 1976 to consider an application by Robintech, Incorporated, Shintech, Incorporated and Plastiline, Inc. (hereinafter collectively "Robintech et al.") to dismiss the three above-entitled Chapter XI arrangement proceedings, or in the alternative, to transfer them to another jurisdiction. Trial of the issues raised by the motion of Robintech, et al. was commenced on December 6, 1976 and was continued on December 14, 1976 and

January 5, 1977, at which time trial was completed.

4. On December 14, 1976, counsel for the parties had discussions as to a possible settlement of a pending contract, anti-trust litigation pending before District Judge Whitman Knapp in the District Court, together with a settlement of the dismissal/transfer motion. Following various off-the-record discussions in Chambers with the Court, the terms of a settlement were agreed to. These terms were embodied in a "Statement for the Record". The basic terms involved the payment by Robintech, et al. to the debtors of $250,000 in full satisfaction and release of the pending contract/anti-trust action. The $250,000 was to be paid $100,000 upon entry of an order of dismissal and $50,000 per month for each of the following three months; Robintech et al. were to withdraw their dismissal/transfer motion with prejudice.

5. It was applicants' belief at that time that there was a firm agreement of settlement as embodied in the Court's "Statement for the Record" and that it was subject to a condition subsequent of approval of the Bankruptcy Court upon notice to the Creditors' Committee.

6. Shortly thereafter, Robintech et al. advised counsel for applicants and the Court that what they considered to be an offer of settlement was withdrawn.

7. Notwithstanding the attempted withdrawal of the offer of settlement, applicants brought on for hearing by Order to Show Cause an application to authorize the debtors to accept the proposed settlement. This application was heard before the Court on January 5, 1977 and said application was denied, so ordered, based upon this Court's belief that there must first be a determination as to whether or not there was a binding, effective contract of settlement, an issue not pre-

sented to this Court.

8. Thereafter, applicants moved for summary judgment before District Judge Knapp based upon the proposition that the "Statement for the Record" constituted a binding, enforceable contract of settlement. On March 18, 1977, Judge Knapp decided that question in favor of applicants. A copy of Judge Knapp's Memorandum and Order is annexed hereto, marked Exhibit "A".

9. On March 16, 1977, this Court rendered its own Memorandum Opinion and Order granting the motion of Robintech et al., in part, and directing a transfer of the three arrangement proceedings to the United States District Court for the District of New Jersey. A copy of said Opinion and Order is annexed hereto, marked Exhibit "B". Applicants have ascertained that the Court placed a hold on the implementation of this order, presumably pending District Judge Knapp's determination of the matters before him.

10. Applicants believe that it is now proper to resubmit to this Court the question of whether or not they should be authorized to accept and implement the contract of settlement. It is applicants' position that such authorization should be given to them for the following reasons:

(a) The cash settlement would provide a much-needed stimulas to the debtors' operations which are presently suffering from an inadequate cash flow;

(b) Applicants are concerned that a transfer of these proceedings to the District of New Jersey would disrupt management and end up in applicants' adjudication as bankrupts to the detriment of its general creditors and stockholders;

(c) Applicants are aware of the time, money and

Exhibit A Exhibit B

effort that would be necessary to bring the pending contract/ anti-trust litigation to a final conclusion through trial as well as the vagaries of litigation and the possibility that notwithstanding applicants' belief that they have meritorious causes of action, that a Court or jury may decide against them;

(d) The energies of applicants' chief operating officers are better spent on business operations then in prosecuting long-range litigation. The official Creditors' Committee has approved the terms of the settlement.

11. Accordingly, applicants request a hearing on notice to Robintech et al. and the official Creditors' Committee for the Court to consider whether the acceptance of the settlement and its approval by the Court is in the best interests of the debtors and their general creditors. Applicants proceed by Order to Show Cause because in light of this Court's existing order of March 16, 1977, time is of the essence in removing the objection by Robintech et al. to the venue of these proceedings.

12. In conjunction with that application, applicants also seek the following relief:

(a) Applicants request that pursuant to Rule 923 of the Rules of Bankruptcy Procedure and Rule 59 of the Federal Rules of Civil Procedure, this Court reconsider its Memorandum Opinion and Order of March 16, 1977 and alter, amend or vacate that order in light of the Decision and Order of District Judge Knapp and the anticipated approval by this Court of the settlement set forth in the "Statement for the Record";

(b) Applicants request an order effectuating the provisions of Rule 802 of the Rules of Bankruptcy Procedure terminating the running of the time for any party to appeal from this Court's order of March 16, 1977;

(c) Applicants request that the Court stay the enforcement of the order of March 16, 1977 transferring the three arrangement proceedings to the District of New Jersey pending a final order of this Court dispositive of applicants' application under Rule 923.

13. Applicants further request that service of this application and the annexed Order to Show Cause upon Krause, Hirsch & Gross, counsel to Robintech et al. personally, and upon the members of the official Creditors' Committee and their unofficial counsel by mail be deemed sufficient service and sufficient notice pursuant to Rule 203(f) of the Rules of Bankruptcy Procedure.

14. In view of the circumstances set forth above, there can be no possible prejudice to Robintech et al. by a formal restraint against the Clerk of the Court from implementing the order of March 16, 1977 and transferring the three proceedings to the District of New Jersey while effectuation of that order would cause irreparable damage to applicants as well as administrative chaos in both districts.

WHEREFORE, applicants pray for the annexed order and for such other and further relief as is just and proper.

Dated: New York, New York
March 22, 1977

LEVIN & WEINTRAUB,
Attorneys for the
Debtors in Possession

BY: ______________________
A Member of the Firm
Office & P.O. Address
225 Broadway
New York, N.Y. 10007
(212) 962-3300

IX

Notice of Appeal to the Court of Appeals, dated March 24, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRECISION POLYMERS, INC. and
PRECISION THERMOPLASTICS CORP.,

Plaintiffs,

v.

ROBINTECH, INCORPORATED, SHINTECH,
INCORPORATED and PLASTILINE, INC.,

Defendants.

76 Civ. 1746 WK

Filed:
U.S.D.C.
MARCH 25-77
SDNY

In the Matter
of
PRECISION POLYMERS, INC.,
PRECISION THERMOPLASTICS CORP. and
FLO-TITE PLASTICS CORP.,

Debtors.

NOTICE OF APPEAL

In Proceedings for
an Arrangement

No. 76 B 2358
No. 76 B 2359
No. 76 B 2360

Notice is hereby given that Robintech, Incorporated, Shintech, Incorporated and Plastiline, Inc., Defendants-Appellees herein, hereby appeal to the United States Court of Appeals for the Second Circuit from the Memorandum and Decision granting Plaintiffs'-Debtors' motion for summary judgment; dismissing the appeal herein as moot and remanding the bankruptcy proceedings to the Bankruptcy Judge, entered on March 18, 1977.

Dated: New York, New York
March 24, 1977

KRAUSE, HIRSCH & GROSS
Attorneys for Appellants

By: /s/ Sheldon Lowe
Sheldon Lowe, A Partner

41 East 42nd Street
New York, New York 10017
Tel: (212) 986-1122

TO:

LEVIN & WEINTRAUB,
Attorneys for Precision Polymers, Inc.,
Precision Thermoplastics Corp., and
Flo-Tite Plastics Corp., Debtors

225 Broadway
New York, New York 10007

Jay Benenson, Esq.
Attorney for Creditors' Committee

744 Broad Street
Newark, New Jersey 07102

X

Answer to Order to Show Cause of March 23, 1977, dated March 25, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Proceedings for an Arrangement

In re

PRECISION POLYMERS, INC.,
PRECISION THERMOPLASTICS CORP.,
FLO-TITE PLASTICS CORP.,

Debtors.

No. 76 B 2358
No. 76 B 2359
No. 76 B 2360

ANSWER

ROBINTECH, INCORPORATED, SHINTECH, INCORPORATED and PLASTILINE, INC., by Krause, Hirsch & Gross, their attorneys, for their answer to the application of the above named debtors, dated March 23, 1977:

1. Admit the truth of the allegations set forth in the last sentence of Paragraph 2 of the application and deny the truth of the remaining allegations set forth in Paragraph 2 of the application. Respondents further allege that an appeal was taken by them from the order referred to in the first sentence of Paragraph 2 of the application and that said appeal is presently pending undetermined.

2. Deny each and every allegation set forth in Paragraph 4 of the application, except admit that on December 14, 1976, during the time scheduled for a hearing in connection with the proceeding described in Paragraph 3 of the application, the parties discussed a possible settlement of the litigation pending before Judge Knapp. For the truth or falsity of the remaining allegations set forth in Paragraph 4 of the application, respondents incorporate by reference the "Statement for the Record"

referred to in Paragraph 4 of the application, and the affidavit of Richard A. Whiting, Esq., sworn to January 26, 1977, and submitted in opposition to applicant's motion for summary judgment before Judge Knapp.

3. Deny any knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 of the application.

4. Deny each and every allegation set forth in Paragraph 6 of the application and aver that immediately after the December 14, 1976 meeting, on the morning of December 15, 1976, respondents informed counsel for applicants and the court that their revocable offer of settlement was withdrawn.

5. Deny each every allegation set forth in Paragraph 7 of the application, except admit that applicants brought on for hearing by order to show cause an application to authorize the debtors to accept the proposed settlement; that the application was heard before the court on January 5, 1977 and that the application was denied, so ordered.

6. Deny each and every allegation set forth in Paragraph 8 of the application, except:

(a) Admit that thereafter, applicants moved for summary judgment before District Judge Knapp; and that on March 18, 1977, Judge Knapp entered the Memorandum and Order, a copy of which is annexed to the application and marked Exhibit "A"; and

(b) Aver that, by Notice of Appeal dated January 5, 1977, applicants appealed from the Order of this court dated January 5, 1977 (and referred to in Paragraph 7 of the application); and that on March 18, 1977, Judge Knapp dismissed the appeal as moot.

7. Admit the allegations set forth in the first two sentences of Paragraph 9 of the application, and deny any knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the last sentence of Paragraph 9 of the application.

8. Deny each and every allegation set forth in Paragraph 10 of the application and each and every sub-paragraph thereof.

9. The statements set forth in Paragraphs 11, 12 and 13 of the application are argumentative and contain requests for relief; no response thereto is necessary, but to the extent that any answer might be required, each and every allegation set forth therein is denied.

10. Deny each and every allegation set forth in Paragraph 14 of the application.

FOR A FIRST DEFENSE

11. The debtors' application fails to state a claim upon which relief can be granted.

WHEREFORE, respondents pray that the debtors' application, dated March 22, 1977, be dismissed with costs.

Dated: New York, New York
March 25, 1977

KRAUSE, HIRSCH & GROSS
Attorneys for Respondents

By: ______________________________
Sheldon Lowe, A Partner

41 East 42nd Street
New York, New York 10017
Tel: (212) 986-1122

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(In Bankruptcy)

In the Matter of PRECISION POLYMERS INC. PRECISION THERMOPLASTICS INC. FLO-TITE PLASTICS CORP., Debtor	76 B 2358 No. 76 B 2359 76 B 2360

U.S. Courthouse
Foley Square
New York, New York

March 28, 1977

AFM - ADJ XI-4
ADJ. S/C (Assoc. Leasing)
ADJ S/C (Flo-Tite Plastics)
OSC re: why an order should not be entered vacating order dated March 16, 1977, transferring proceedings.
OSC, re: why an order should not be entered accepting an offer to compromise litigation
OSC re: compel compliance with agreement (T.F.I.)

B E F O R E:
HON. JOHN J. GALGAY, Bankruptcy Judge

RAYVID REPORTING SERVICE
CERTIFIED STENOTYPE REPORTERS
150 NASSAU STREET
NEW YORK, N. Y. 10038
CORTLANDT 7-3877
3878

APPEARANCES:

LEVIN & WEINTRAUB, ESQS.,
Attorneys for Debtor,
225 Broadway
New York, New York
BY: DANIEL ZIMMERMAN, Esq., of Counsel and
BY: CHARLES WEINTRAUB, Esq., of Counsel.

KRAUSE, HIRSCH & GROSS, ESQS.,
Attorneys for Robintech, Inc.,
41 East 42nd Street
New York, New York

BY: SHELDON LOWE, Esq., of Counsel
- and -
JOHN SCHEFFEL, Esq., of Counsel .

OTTERBOURG, STEINDLER, HOUSTON & ROSEN, ESQS.
Attorneys for T.F.I. Companies, Inc.,
230 Park Avenue
New York, New York

BY: SCOTT B. HAZAN, Esq., of Counsel.

ROOD, SCHWARTZ, COHEN & RUDERMAN, ESQS.,
Attorneys for Assoc. Leasing, et ano,
1776 Broadway
New York, New York

BY: JEROLD RUDERMAN, Esq., of Counsel.

BERNARD RACKEAR, ESQ.,
Attorney for Precision Polymers, Inc.,
25 West 43rd Street
New York, New York.

JAY R. BENENSON, ESQ.,
Attorney for Creditors Committee,
6 East 45th Street
New York, New York

COUDERT BROS., ESQS.,
Attorneys for Sumi Tomo,

200 Park Avenue
New York, New York

BY: SENG KIE TJIA, Esq., of Counsel.

- - -

MR. LOWE: I believe we have the adjourned first meeting and the adjourned XI-4 proceeding on.

MR. WEINTRAUB: At the hearing last week I believe you directed that the operating statements be brought up to date and that schedules be filed by March 25, 1977. The schedules were filed on Friday, March 25th, in the three cases and the operating statements through the period March 6, 1977 have been filed.

THE JUDGE: Do you have copies for me? I don't happen to have the clerk's office copy.

MR. WEINTRAUB: Here (handing).

As you can see and as the creditors committee has been advised previously, the losses since the Chapter XI with the exception of the first few days that the Chapter XI was filed have been what I would deem somewhat substantial.

MR. LOWE: How much are they? Why don't we take each month or each reporting period?

MR. WEINTRAUB: They speak for themselves.

THE JUDGE: Just give me a total, if you will, Mr. Weintraub, if you can.

M MR. WEINTRAUB: Approximately $900,000, I think, rounded off, probably give or take a few thousand.

The extent of the losses, although not previously given to the creditors committee, had been discussed at numerous meetings of the creditors committee.

Mr. Rosenblum, at those meetings, had indicated that up through the month of March he expected losses unless he received an infusion of capital during the months of February and March.

Otherwise, the turn-around would not take place until April. We had anticipated that proceeds of the sale of various assets which were authorized to be abandoned by this court would bring in the needed capital so that raw material could be purchased and the company could start to show a profit in February.

That unfortunately has not been the case. Those sales have not been completed and that money has not been received by the debtor in possession. We believe that based on the projected sales for April, as Mr. Rosenblum has those sales in house, both in back orders and current sales, that a figure of $1,600,000 can be achieved in sales in the month of April.

Mr. Rosenblum is in court to testify as to his break even figure of approximately $1,500,000, so that we do believe that for the next thirty-day period the losses will be curtailed and there might even be a small profit. Traditionally the month of April is a profitable month. The only thing keeping this company from profits at the moment is operating capital. There are sales and they're coming into even their better sales period now. Raw material is tight. He is on a CBD, if not a COD basis.

THE JUDGE: Meaning cash before delivery.

MR. WEINTRAUB: Yes.

We presently, I think within the next two days or so will be in a position to submit an application to the court whereby one or two suppliers have agreed to supply on credit to the debtor in possession resin that is needed to bring out the pipe and finished product that this debtor in possession sells.

We obtained the acquiescence of Commercial Trading who holds the first lien on the inventory to the transaction whereby these suppliers will be granted a lien in the particular inventory of resin which they delivered to us and in the product of that resin or in an equivalent amount at the cost value of the resin supplied to the debtor in possession, so that there will not be any prejudice to either the first lien position of Commercial Trading, nor of the second lien position of Sumi Tomo, who claims a secondary security interest in that inventory.

Both with the infusion of the resin by way of basically a first lien being given to those parties, as well as the hopeful infusion of some capital by way of a proposed settlement with Robintech or even without that, I might say, just alone on the resin that can be coming in by way of credit, Mr. Rosenblum believes the company in April will be profitable.

THE JUDGE: How do you mean a loan coming in on credit, someone is going to sell to you on credit a million dollars worth of material and you're going to get a loan from another bank?

MR. WEINTRAUB: No, sir, not a million dollars.

THE JUDGE: I am using that as round numbers.

MR. WEINTRAUB: A resin supplier will give us resin, on credit, on a twenty-one day credit situation.

THE JUDGE: Then you will get a bank loan pledging that as collateral?

MR. WEINTRAUB: We are going to pledge that collateral to the supplier, giving him a security interest in the resin, in the pipe or equivalent amount of inventory we have on hand for the cost of his supply to us, which is basically a purchase money security interest in both the resin and the product out of that resin, since the resin basically is a fungible mass that goes into other resin which we have in our inventory and comes out in the way of pipe.

MR. LOWE: Is there any lien on that inventory?

MR. WEINTRAUB: On the inventory coming in?

MR. LOWE: Will there be under existing security agreements?

MR. WEINTRAUB: The line of whoever the particular supplier then is.

MR. LOWE: How about Commercial Trading? Do they have a lien?

MR. WEINTRAUB: Commercial Trading is subordinating its liens. It is our position that Commercial Trading would not have a lien on it, nor would Sumi Tomo because it is a purchase money security interest and will be filed as such.

However, better practice has dictated that we believe we should get the subordination of both Commercial Trading and the non-objection of Sumi Tomo on this transaction.

MR. LOWE: Has Sumi Tomo consented?

MR. WEINTRAUB: They have not

consented. I understand from counsel that if an appropriate order is submitted, they will not object to the transaction.

THE JUDGE: Direct your comments to me.

MR. LOWE: I'm sorry.

MR. WEINTRAUB: Based on that, I would like to put Mr. Rosenblum on.

MR. LOWE: Can I be heard?

THE JUDGE: Yes.

MR. LOWE: We have the benefit of the presence of the attorney for the creditors committee here, Your Honor. Since it is the principal responsibility of the attorney for the creditors committee to protect the interests of creditors, I would wonder whether or not he has any comments on the losses that have been indicated since the inception of the proceeding.

MR. WEINTRAUB: Might I say before Mr. Benenson answers that, Mr. Lowe does have a way of coaching --

THE JUDGE: That's all right, just stay with the issues.

MR. WEINTRAUB: Before the inception, even before the Chapter XI was filed, the creditors were told that this case from the point of view of a plan would have to entail outside funds; that losses would be substantial. That if there were a liquidation in bankruptcy and we are prepared to go through this again today, the assets were such that it would be unlikely that Sumi Tomo, who has the second lien on all the assets, would come out of this situation with even close to the full amount that is owing to them.

So the fact that the creditors or their counsel have seen losses and have seen fit not to push us to the point of coming up with a meaningless plan without a third party investor, I think should not in any way denigrate the position of the committee.

I have had at least three

meetings with the committee when these have been discussed and nobody is happy with the losses.

THE JUDGE: I will hear from counsel for the creditors committee to see what his observations are with respect to the operations.

MR. BENENSON: First of all, I thank Mr. Lowe for pointing out my responsibilities, even though I know what they are.

We received from Clarence Raines & Co. his report dated March 4, 1977. I am not pleased with the losses, I don't think anybody would be pleased with the losses. This report is going to be circulated among the committee and we hope to have a meeting in the early part of next week.

Insofar as the losses are concerned, we knew about losses. There was a magnitude about which we did not know about and now we do know.

THE JUDGE: This is almost $2 million.

MR. BENENSON: That's right, it is a business decision which has to be made by rather experienced business people to determine whether we are going to say this far and no further; whether they're going to balance off something in the back of our minds from the very beginning of this case and that is what these creditors are going to get in the event of litigation.

I think that's the polestar that has to guide the activities of any committee as an option, as a trade-off.

I believe that the committee has in its mind the feeling that in the event of a liquidation there may be very little that would trickle down through the classifications and priorities to these unsecured creditors.

I assure the court that the losses that we have seen here are not going unnoticed and will be dealt with at the proper time with the business people who have to make the decisions for themselves as well as representatives of those creditors who aren't on the committee.

MR. LOWE: May I be heard?

If Your Honor pleases, I do regret that I have to remind Mr. Benenson of his responsibilities to creditors.

We had a meeting here last Monday a week ago today at which Mr. Beneson was not present. I pointed out to the court something he should have pointed out to the court, that this proceeding was filed on October 20th.

That it wasn't until last Friday that we have the benefit of schedules in this proceeding.

In addition to that, no operating statement had been filed with the court. It wasn't until late Friday that operating statements were filed. These were prepared contemporaneously, it would appear, for the period October 20th through March 6th. It was through my urgining that we have the benefit of schedules and an operating statement. I took particular pains, Your Honor to go through the transcripts of every proceeding before this court since the inception of this case.

Not one word was told to you on this record and in the courtroom about the kinds of losses we sustained here. It was not hinted at, it wasn't even suggested.

As a matter of fact, Your Honor, the scant statements that were made before the court I submit were misleading. I am not suggesting that they were deliberately misleading because I really don't know that. When we appeared on January 5th, Your Honor, at a time when this debtor had sustained a half million dollarsin losses, in connection with the adjourned XI-4 meeting, you asked Mr.

Weintraub whether or not a report had been made.

Now, this is what you had to guide you, Your Honor. "Mr. Weintraub: We are in the process of doing it."

This is January 5th. "Cash flow wise Mr. Rosenblum tells me that January he hopes to show a positive cash flow. The initial projections indicated that both December and January would be negative. Those figures, Judge, with the assistance of Raines, hopefully, will be available within a very short period of time."

That is the only knowledge that was imparted to this court from the records which I have examined with respect to this debtor's operations. At that time they had lost one-half million.

THE JUDGE: A little more.

MR. LOWE: Maybe a little more, Judge.

I respectfully submit that this

court had a right to know from any source what the facts were with respect to this debtor's operations.

THE JUDGE: What is your point?

MR. LOWE: The point is, Your Honor, I think we've been snookered here. Mr. Benson is talking about --

THE JUDGE: What does that mean? That is a Bronx expression that has escaped my --

MR. LOWE: It is a poolhall expression and I must confess, since I am not a habitue of poolhalls, I just have some idea of what that means.

THE JUDGE: I think I knowwhat you mean, you have been had.

MR. LOWE: I think the court and creditors were entitled to know what is happening here.

Now, Mr. Benson says he really hasn't analyzed these figures and he does not know what to do with them. He is worried about the best interests of creditors. Well, you and I know --

THE JUDGE: You are leading up to a recommendation that there be indemnity imposed, I gather.

MR. LOWE: I hope we can establish some facts upon which we can predicate that, Your Honor. But if Mr. Benenson is concerned about the best interests of creditors, he should have given a little thought to it or more thought to it before a million dollars went down the tube here, Your Honor.

THE JUDGE: Well, we are all disappointed in the operating figures but are you making a recommendation that indemnity be imposed?

Are you prepared to go ahead with an examination?

MR. LOWE: I would ask Mr. Benenson whether or not in the interest of creditors here and since I believe it is his primary responsibility to protect the interests of creditors, whether or not he wants to make an inquiry of Mr. Rosenblum with respect to their operations within the next thirty or sixty days so we can ascertain whether or not there is a loss and if there is going to be a loss, something should be done to protect the estate.

I think it is about time something was done to protect and preserve this estate.

THE JUDGE: I will suggest that you do that. I will participate in the inquiry. Let's get onto some problems that have occurred since the last meeting.

It seems that I handed down an opinion suggesting or ordering that the matter be transferred to New Jersey and I set forth the reasons for that in my opinion. Then shortly thereafter Judge Knapp from the District Court handed down an opinion finding that an agreement purportedly made before me in my chambers was a valid agreement and referred it back to me to determine whether or not that agreement should be acted upon in the Bankruptcy Court as being in the best interests of the estate.

Do I understand that the debtor in possession through its moving papers has at least stayed that proceeding?

MR. WEINTRAUB: Yes.

THE JUDGE: So that the time for the running of the appeal would be stayed.

MR. ZIMMERMAN: Yes, Your Honor, it is extended and terminated until Your Honor's ruling on that part of the motion that is before you today, a new hearing to vacate the order that you entered with your opinion of March 16th.

THE JUDGE: Do you have any position with respect to that?

MR. LOWE: May I respectfully request that you defer consideration of the motion until we develop the record with respect to the losses that have occurred and that may occur, because I think it would be relevant to any determination you may want to make or could make at this point.

THE JUDGE: Well, I want to make it clear that when I signed the order to show cause -- was it an order to show cause?

MR. ZIMMERMAN: Yes.

THE JUDGE: At least I intended at that time to toll the time for the running of any appeal pending --

MR. LOWE: I have no concern with that.

THE JUDGE: If the record is clear with respect to that, we will go on.

MR. WEINTRAUB: I think that is what the statute itself says.

MR. LOWE: I have no problem with that.

MR. WEINTRAUB: I would think, though, once again that the matter of business before the court really is whether we now have a settlement which should be approved by the court. If we do, then I have to once again question Mr. Lowe's motives in wanting to examine and wanting to seek losses.

As the court is aware, the only creditor that has appeared and shown any interest in this proceeding from the point of view of losses and continuation of the plan and so is Robintech and Mr. Lowe's other clients, who are defendants in the antitrust action.

Judge Knapp has basically said that action is settled subject to Bankruptcy Court's approval. If in fact we have the Bankruptcy Court's approval, which I think we should have, I don't believe we any longer have Mr. Lowe or his clients in this proceeding as participants.

Therefore, I think we should take the threshold question and then I would ask that Mr. Lowe and his clients should no longer be entitled to participate in this proceeding.

THE JUDGE: I assume Mr. Lowe has some right of appeal. Have you exercised that at all?

MR. LOWE: That has been taken and hopefully Mr. Benenson has been galvanized with respect to some interest on the question of indemnity. We are currently conducting an indemnity hearing and I respectfully request that we conclude that before we go onto the consideration of the motion that was brought subsequently.

I think it is relevant.

MR. WEINTRAUB: I think it beclouds the issue, Judge, on whether the settlement is in the best interests of the estate or not inthe best interests of the estate, but I will defer to Mr. Benenson as a representative of the creditors committee.

THE JUDGE: I will hear from Mr. Benenson.

MR. BENENSON: I need very little galvanization, particularly from what Mr. Lowe said, who I recognize represents a debtor of this estate, no longer a creditor, a debtor. There is a decision that in essence states Mr. Lowe's client has settled for $250,000, subject to Your Honor's approval,which is on appeal.

I recognize that the issues of these losses must be gone into at some great detail, I agree with Mr. Lowe. We have Mr. Rosenblum here today for that purpose.

I'd like to understand first of all whether ot not this particular phase of the case is over, and behind us.

THE JUDGE: What particular phase?

MR. BENENSON: Whether or not the offer of settlement of $250,000 which is before Your Honor is in the best interests of this estate.

I believe that issue is now still before the court. Once we get that in line, then I believe we can go ahead with the other matters that should be before Your Honor.

But that is the first case, the first issue that seems to be before the court and that should be determined. At least, let us find out whether or not in the court's point of view this offer of $250,000 and its acceptance is in Your Honor's judgment in the best interests of this estate.

At least, we can find out who Mr. Lowe represents. I would like to find that out.

THE JUDGE: Is there any secret about who Mr. Lowe represents?

MR. LOWE: Judge, if there is any question about it, I represent the interests of justice and fair play.

THE JUDGE: Perhaps you ought to name more specific clients.

MR. LOWE: I think it is evident.

MR. WEINTRAUB: I think the point

is and a very serious point that Judge Knapp made, who is a very fine judge, who has said Mr. Lowe's clients owe this estate $250,000. I think for Mr. Lowe to lead this proceeding around and for Mr. Lowe to do what he wants as a debtor owing a quarter of a million dollars is just a little, if I might say, presumptuous.

I think previously when we had the hearing before you on January 5th, your concern was there is nothing before me, there is no settlement before me, therefore your papers, Mr. Weintraub, or the debtor's papers to approve this offer are premature and take it to another court, which was done.

That motion for summary judgment was granted. Mr. Lowe or Mr. Lowe's clients has appealed to the Second Circuit by notice of appeal which I received this morning, which we believe is a premature appeal since it is an interlocutory order.

Be that as it may, there is an

appeal there. If in fact this court adheres to the decision that was dictated in the record and the creditors committee's counsel still has that same position and I have authorities to support the reasons why the settlement is in the best interests of the estate and . Rosenblum here, I think it puts a different light on Mr. Lowe's questioning when this court finds, if this court finds that his client is bound to the quarter of a million settlement because of the fact that it is in the best interests of the estate.

His questioning now as a creditor certainly takes on a different aspect, as far as I am concerned, when he is questioning the debtor as a quarter of a million dollar debtor of that estate. I think we are entitled to at least that relief at this point.

I certainly have no objection to Mr. Rosenblum going on the stand at any point but I would prefer and it is our request and apparently it is the creditors committee's request, that we get by this very initial threshold problem as to whether the settlement is in the best interests of the estate.

THE JUDGE: Let's separate the proceeding. We started out with the adjourned first meeting of creditors and the indemnity hearing. I thought that part of Mr. Lowe's comments and questions were leading up to the question as to whether or not there ought to be indemnity required.

Then, I interrupted that by bringing in Judge Knapp's opinion and my opinion to see just where those two problems meet.

MR. WEINTRAUB: I say this, where they meet, if indemnity is required and it could only be required if somebody can prove in the next thirty days there are going to be losses. The fact that there have been substantial losses over the last six months have no relevancy to what may happen in the next thirty days.

THE JUDGE: The real issue is whether or not the estate is being dissipated while we are waiting on a Chapter XI plan of arrangement.

MR. WEINTRAUB: That's correct, the estate will not be dissipated, as Mr. Rosenblum can indicate, if we get a $50,000 payment in from Robintech initially and have the ability also to go forward on the purchase money security interest that I referred to earlier.

So knowing Mr. Lowe and his ability, if Mr. Rosenblum gets on that stand, we could be here until 5:30 and never reach the issue.

MR. LOWE: The court directed Mr. Benenson to direct the inquiry.

MR. WEINTRAUB: I think the inquiry is to my client through myself.

THE JUDGE: We have too many people bouncing up and down without very much order in this matter at this point. Suppose we call the president of the debtor in possession.

What do you propose to ask, what do you propose to prove?

MR. WEINTRAUB: I don't think I have to prove anything except to ask Mr. Rosenblum what his projected sales are for the next thirty days, what his break-even point is based on his operations for the next thirty days and I believe that will indicate to the court and it is only a projection, that based on that and based on an influx of subordinate, in effect, capital coming in through the security interest that there will be sufficient wherewithal to this debtor --

THE JUDGE: And you'd overcome any demand for indemnity.

MR. WEINTRAUB: I certainly would propose to do so.

THE JUDGE: All right, let's resolve that problem first, call your witness.

MARVIN A. ROSENBLUM,

Called as a witness, having been first duly sworn by the Judge, was examined and testified as follows:

EXAMINATION BY THE JUDGE:

Q What is your full name?

A Marvin A. Rosenblum.

Q Where do you live?

A 110 Klive Street, Edison, New Jersey 80018.

EXAMINATION BY MR. WEINTRAUB:

Q What office do you hold with the debtor?

A I am chairman of the board, president and chief executive officer.

Q As such, are you familiar with the consolidated statement of incomes which have been filed with the court from the period October 21, 1976 through March 6, 1976?

A Yes.

Q Are you aware that those statements show losses of approximately $900,000?

A That's true, yes.

Q Could you state in a general way the reasonsfor the losses over that period of time?

A Well, as we explained to the first informal meeting of our creditors and two formal meetings from then on, that had we chosen -- we couldn't have chosen a worse time if we had planned to go into a Chapter XI, Mr. Weintraub, in terms of the season in which we were entering.

We filed our petition on October 20th. Going into the slow period of the year, knowing full well that it is extremely difficult to sell the products that the company manufactures in -- during the months --particularly during the months of December, January, February. This year that circumstance was aggravated by a very unusual, horrendous winter where areas of the country that we had always relied upon to supply us with volume during the quarter that I just mentioned were snowed in.

THE JUDGE: You are talking about volume of sales, orders?

THE WITNESS: When Mr. Lowe is finished, I will be glad to continue.

THE JUDGE: Look, you answer the questions, don't worry about what Mr. Lowe is doing or anyone else. Don't get involved or excited.

THE WITNESS: I'm sorry, he was talking and it was diverting my thinking.

That's what happened to us.

Q Based on your knowledge of the business and your historical operations, what do you need in the way of net sales in order to make a profit or at least break even?

A Well, based upon prices at which the product is selling currently, about a million and a half dollars.

THE JUDGE: Over what period?

THE WITNESS: I'm sorry, over a period of a month.

MR. WEINTRAUB: On a monthly basis.

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Q During this period, October 21st through March 6, 1977, did the sales ever come to $1,500,000?

A They did not.

Q Do you presently have on hand for the next thirty-day period, either by way of back orders or current orders, sales that approximate $1,500,000?

A Well, we are entering the month of April with probably the largest backlog of orders that the company ever had. It amounts to 1,689,000 pounds as of this past Friday.

MR. LOWE: Pounds or dollars?

THE WITNESS: Pounds.

THE JUDGE: What does that relate to in dollars?

THE WITNESS: In terms of today's pricing that would amount to about $750,000-$800,000 of pipe sales.

You have to add to that what is a traditional 30/70 ratio, the number of fittings that would be sold with that pipe. So that assumedly it would amount to a total of over $1 million worth of sales.

Now, the thing that must be understood about that backlog is the fact that we service a portion of the industry that normally does not place orders except upon immediate demand. They expect that orders are to go out within twenty-four hours after receip- or forty-eight hours after receipt.

This is not a backlog business that we service. I think that a good portion of this backlog has come about because of the -- because the industry does not want to see us disappear. They are very sympathetic to our position and are trying to help us in creating -- in providing us with orders at a very unusual time of the year.

THE JUDGE: In other words, they may not have projects where they could use the product immediately but they are encouraging you by giving you a million dollars worth of orders for pipe?

THE WITNESS: Yes, and I would say the total number of accounts that amounts to is several hundred.

Q You just indicated, I believe, was net sales of $1 million, which includes pipe sales and fittings?

A Yes.

Q That is back orders, which you already have in the house; is that correct?

A Yes.

Q That you could deliver in the month of April if you had the resin?

A Yes.

Q Is that correct?

A Yes, Mr. Weintraub.

Q What do you have in the way of sales projected for the month of April?

A Well, we had hoped to be able to do between $1,500,000 or $1,600,000 in the month of April, contingent on the availability of raw materials.

Q Does that include the million dollars of sales or that is over and above the million?

A That would include the million dollars worth of sales.

Now, it must be understood that this does not include any orders that would normally be placed as orders normally are; that is, for immediate shipment.

Q What would be either your cash requirement needs or credit needs in order to fulfill that level of sales to bring you to $1,500,000?

A Well, we would need approximately $150,000 worth of additional raw materials.

Q That is at your cost?

A Yes.

Q Have arrangements been made to bring in $150,000 worth of raw materials?

A We are coming very, very close to an agreement to that effect right now, yes.

Q You have suppliers subject to the legal necessities of the court, the submission of papers, that are willing to go forward with that?

A Yes.

Q Based on that, the $1,500,000, the $1,600,000, the company would not lose money within the next thirty days; is that your statement?

A That is my hope.

MR. WEINTRAUB: I have no further questions.

THE JUDGE: Does anyone else want to inquire?

EXAMINATION BY MR. BENENSON:

Q Initially what steps were made to cut costs when the Chapter XI cases were filed?

A Since the filing of the Chapter XI the company reduced its personnel staff from -- personnel from 289 to 159 as of last Friday. That weekly payroll went down from approximately $46,000 to about $25,000.

In addition to that --

MR. LOWE: Excuse me, what has this got to do with subsequent loss or diminution? He did this before they lost a million dollars.

THE JUDGE: I will allow him to answer.

THE WITNESS: That is not true, Mr. Lowe.

THE JUDGE: Don't argue with Mr. Lowe.

Go ahead.

Q What other steps were taken in this case?

A We closed our plant in Urbine, California, reducing a cash drain that amounted to in excess of $50,000 a month. We closed our plant in Houston, Texas, eliminating not a significant but a cash drain on the company. We have cut our total administrative costs, G and A costs by approximately $60,000 a month. We have disaffirmed various leases and employment contracts.

The lease inwhich we are operating -- from which we are operating the corporate offices now has been disaffirmed and at the grace of the landlord we are occupying one-third of the facility at a very, very low rental or one-wuarter of the facility, I'm sorry.

We have been forced to reduce personnel, very valued employees, down to absolutely the bare minimum.

Q Is it fair to say your company seems to be directly affected by new starts, new construction?

A By housing starts, you mean? Yes, capital expenditures.

Q Capital expenditures?

A Yes.

Q In the last six months, can you just give us an idea how the industry was affected by those starts?

A Well, housing starts have been very volatile. In fact --

MR. LOWE: May I have a continuing objection?

THE JUDGE: You may.

MR. LOWE: We are talking about subsequent loss or diminution. What we are talking about is history here.

THE JUDGE: Your objection will continue but I will allow him to testify.

A Housing starts moved ahead significantly if you recall from the papers in January, resulting in the backlog we feel that we have right now.

THE JUDGE: Would you get into the question of what he projects?

MR. BENENSON: Yes.

Q You have projected, have you not, in the month of April a certain amount of dollars to come in as gross revenues?

A Yes, subject to the availability of raw materials.

Q Tell me what those projections are and what they are based on?

A They are based upon using the three existing facilities that we currently have; of course, being able to maintain our sales organization and converting approximately three million pounds of product, pipe, into -- I'm sorry, of raw materials into finished product.

To make that relevant to you --

THE JUDGE: How much of the three million pounds in inventory in the raw materials of resins do you have right now?

THE WITNESS: Well, there is very

little work in process in our business, Your honor. Unfortunately, we are buying, as Mr. Weintraub hadsaid, a cash on delivery, CBD basis and as a result we don't have any raw materials to speak of; we ain't got none.

Q If that condition continues obviously you are not going to make the target numbers that you talk about?

A If that condition continues and we are unable to culminate a private sale of equipment as part of our Houston sale and one of our major competitors who is represented here maintains its predatory practices and our suppliers do not wish to supply us on the basis that we are petitioning the court, we will not be able to make that projection, yes.

Q What stage are the Houston negotiations in now?

A Well, a closing was set for tomorrow. Unfortunately, there was a setback I understand as a result of a relationship which had nothing to do with our company. We do have a signed contract for the sale.

MR. LOWE: I object to this, a sale of assets has nothing to do with subsequent loss or diminution. We are talking about operations of a business.

THE JUDGE: I think what he is trying to explain there is there may be some funds available for the purchase of raw materials, which in turn might generate some sales.

MR. LOWE: So long as it is understood for that purpose, I have no objection.

MR. BENENSON: All it is leading up to the company needs its blood and without that blood it could dry up and we recognize it.

Q What will be generated from the Houston sale if it goes through in cash?

A $100,000 in cash plus notes for $75,000 over a ninety-day period.

Q What assets are you giving up

for this?

A Assets approved by this court --previously approved by this court for sale.

Q You were made a business judgment they were not essential for the running of this company?

THE JUDGE: What are the assets?

THE WITNESS: One two and a half inch extrusion line that was located in our Houston plant and a three and ahalf inch extruder. The assets will be installed in our Charlotte facility after the sale

Given the sale goes through as anticipated, part of our contract includes our receiving revenues from the conversion of raw materials through those machines that we have sold.

So in other words, Mr. Benenson, we have sold our assets and we still have them.

Q What business decisions are you going to make that is going to change this business in the future so that the mistakes made in the past do not occur again?

What are you going to do differently in the next six months assuming you get sufficient liquidity?

A Mr. Benenson, I must tell you I feel that we have pulled in the company almost as much as it can be pulled in without totally destroying it.

The emphasis now has to be not upon parrying a competitor who is trying to put us out of business and tying us up in the courtoom but on building up our sales and generating a solid, substantial gross profit, as we have been doing, incidentally, these past two months.

I might add, Mr. Benenson, that during the period that we were losing these monies, last year that is, we were generating gross profits of anywhere from twelve percent to nineteen percent and they are all part of the ten questions that you gentlemen have as your part of your file.

Today, our standard gross profit before manufacturing variances are all between twenty-four and twenty-six percent.

THE JUDGE: You do not claim you

made money from October through March, do you?

THE WITNESS: No, no, I don't. What I am saying is we have maintained -- we have been able to maintain on a standard cost basis the high gross profits but they have been lost as a result of our inability to generate sales during the winter months or because of the lack of raw materials when sales -- when we had heavy sales backlog, that is during February and during March.

Q During the Chapter XI, has the relationship with Commercial Trading Co., Inc. continued?

A It has.

Q Have they still factored, continued to factor up to approximately ninety percent of non-delinquent accounts?

A They have been advancing us eighty-five percent.

Q What are the interest rates they charge?

A Our average interest rate is 5½ percent above prime after consideration of their participation with the bank. Their rate is 6 percent.

THE JUDGE: Give it to me so I will understand what you are paying. What are you paying, about 12 percent, 14 percent?

THE WITNESS: Well, at a 6½ percent interest rate, we are currently paying 12½ percent, yes.

Q Assuming that hope springs eternal, there has to come a point when even you are going to state this company is not going to make it.

Is it fair to say the spring will be the time when you will be able to generate whether there will be sufficient sales to make that determination?

A Yes, I need ninety days.

Q You are talking aApril, May and June?

A Yes.

Q You are talking about the end of June?

A Yes.

Q At that time what do you anticipate as to your gross revenues and your net profit each month, if you have any projections?

A Well, again, everything being contingent upon the availability of material, but I would say to you that we will generate at least $1,500,000 to $1,600,000 every month.

THE JUDGE: In gross sales?

Q Gross sales?

A Gross revenue sales, Mr. Benenson, asked.

THE JUDGE: Go ahead.

A And we will have -- giving effect to taxes, profit of between six percent and seven percent.

Q When you talk about $1,500,000 or $1,600,000, you are not considering the Robintech settlement or the Houston sale?

A I am not considering either one, that's correct.

Q If that money came in we are ta talking about an overage, are we not?

A That's right, and we are talking about substantial profits. Well, substantial is relative but profits.

Q In the month of February, what was your gross?

A We did 900 and -- just say of one million.

THE JUDGE: For the month of February?

MR. BENENSON: Yes.

A That's for the period ending March 6th.

Q For the full month of March, what do you project to be your gross sales?

A About the same.

Q Another million dollars?

A Yes.

Q From your own dollars, your own estimate you have a short fall each month of approximately how much?

A Well, as I had been saying from the start practically here, we would be losing between $150,000 and $200,000 a month until we got up to our budget projection.

Q Are there any other areas in the business that can be cut further to reduce your expenditures?

A Yes, we are considering other areas.

Q What are they?

A I am reluctant to answer you because in this room are our competitors and I know that this is going to be used against us and unless the judge orders me to do so, I know that this will be back to Fort Worth tomorrow.

Q Unless you are going to come up with some marvelous technique in the business, we should be advised.

THE JUDGE: Read the question back.

MR. LOWE: If Your Honor please, may the record reflect that counsel for the debtor is coaching Mr. Benenson with respect to inquiries during the course of this hearing.

THE JUDGE: All right, Mr. Lowe, I will ignore your comment.

MR. BENENSON: Thank you.

MR. WEINTRAUB: I wish I could coach him.

THE JUDGE: Go ahead.

(Question read back by the reporter.)

THE JUDGE: Your comment, was that to that question?

MR. LOWE: No, I just wanted the record to reflect what I said it reflected.

MR. WEINTRAUB: I think Mr. Rosenblum had just indicated that perhaps what he might indicate and I don't know what he is talking about, is that additional areas of cost cutting may give some fuel to his competitors and perhaps the question could be raised to ask what the total dollar cuts involved are.

Q In general, do you have any projected expense cuts?

Do not tell us where they are going to occur. Do you have any suggested ways of cutting your expenses any further?

A Yes, we do.

Q Do you have a dollar figure?

A Yes, it's been conceivable that we can save up to $150,000, $200,000 on an annualized basis.

Now, I can, if you don't mind, give you

one or two areas where those savings will be effected.

One is in the data processing. It's taken us this length of time to switch from a full blown D.P. system to a terminal system and we have [illegible]n effectively paying for both for these past thirty or sixty days and we will probably be paying for another thirty days, in order not to lose control of inventory and all of our accounting procedures.

Q What is your annual salary now?

A What am I drawing now?

Q Yes.

A $60,000.

Q What were you drawing at the time you filed the Chapter XI?

A $115,000.

Q There are other executives earning substantial sums of money; are they not?

A Yes.

Q William Malia?

A Yes.

Q Jesse Taub?

A Yes.

Q Have you given any thought to any further reduction of salaries on the executive level?

A Yes.

THE JUDGE: Let the court make an observation. If he cuts his salary to the point where he loses zeal to come out with a decent plan of arrangement, I think that you might as well have him adjudicated now.

If a man has cut his salary from $115,000 to $60,000, I think it is indicative of the desire to be cooperative.

MR. BENENSON: So do I, Your Honor.

THE JUDGE: I won't ask you for your observations, Mr. Lowe.

Any other questions?

MR. BENENSON: Just one.

BY MR. BENENSON:

Q When will the numbers be available for the month of April? What I am suggesting to you is how long does it take for you to assimilate the numbers and get them in some kind of intelligent form so we can analyze them?

A Normally, I would say between fifteen and twenty days, Mr. Denenson, and feel confident that the numbers are right for you.

My problem in giving you a specific length of time right now is we just switched to the Zerox D.P. system, assuming that it works well, I would say fifteen to twenty days.

Q So you are suggesting by April 15th the April figures and numbers will be in?

A I would rather say the end of May.

Q Is there any way to accelerate that information, any way of speeding up giving us that information?

A Yes, I could give you a qualified statement, assuredly, probably within ten days after the end of the period, understanding that they would have to be audited internally.

THE JUDGE: Do you have the copies of the original schedules handy? I am curious to know what the assets and liabilities were represented to be on the date of the filing.

MR. WEINTRAUB: I don't have copies with me. They are basically about that large with the list of creditors.

MR. LOWE: I have them.

THE JUDGE: Can you give me a figure? I don't need to see them. What were the assets and liabilities, as of the date of filing?

MR. LOWE: Here (handing).

MR. WEINTRAUB: This is just Precision Polymers.

MR. LOWE: Look for the summary of assets and liabilities, it should be there.

MR. WEINTRAUB: This is just on Precision Polymers.

THE JUDGE: What do you have?

MR. WEINTRAUB: The total liabilities, $457,134 and the total assets, $652,581. But the operating company, which is Thermoplastics, I can ask Mr. Rosenblum, do you recall offhand --

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MR. LOWE: May I respectfully suggest that we get the documents and put it on the record?

THE JUDGE: No, I am only interested in forming a judgment. I believe Mr. Rosenblum.

MR. WEINTRAUB: I believe the liabilities were --

THE JUDGE: Just ask him the question.

BY MR. WEINTRAUB:

Q Can you tell me the unsecured liabilities?

A Unsecured liabilities were approximately $3 million, secured liabilities were approximately $2 million and then we have a third class, a separate class of approximately a million dollars, actually, $944,000.

Q Of secured debt?

A Of questionable secured debt.

Q Do you recall the assets that were listed, the dollar number of the assets on Thermoplastics?

A We are talking on Thermoplastics as of October 20th, it would be approximately $7 million.

THE JUDGE: Assets or liabilities?

THE WITNESS: The assets.

Q That was on a consolidated basis, Thermoplastics, Polymers and Flo-Tite?

A Yes.

MR. HAZAN: May I ask one question of Mr. Rosenblum at this time?

THE JUDGE: Who do you represent?

MR. HAZAN: I represent among other creditors T.F.I. Companies, Inc.

MR. HAZAN: It is a company who had started an adversary proceeding before you which resulted in a settlement approved by Your Honor's order of February 10th and it is the subject of an order to show cause returnable before you today which I am sure will be taken care of at the conclusion of the adjourned first meeting aspects you have before you.

I would merely inquire of Mr. Rosenblum as counsel for several interested

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creditors, not only T.F.I., whether or not he knows whether operating statements which have been referred to extensively throughout this hearing are on an accrued basis or are they on a cash basis?

THE WITNESS: No, to the best of my knowledge, they are on an accrued basis.

BY MR. HAZAN:

Q So we understand the terms, if an obligation is incurred, whether or not it was paid is reflected on those operating statements?

A That would be my understanding. I would like to qualify only that I received these numbers from my senior vice-president of finance.

Those are his instructions and I expect that's been done.

THE JUDGE: Who is your senior vice-president in charge of finance?

THE WITNESS: That is Mr. Malia, who Mr. Denenson referred to.

MR BENENSON: I referred to him

from these records. He is not in court, I don't believe.

THE JUDGE: So in brief, it is your testimony that it is going to be at least a couple of months before you turn this matter around to come out in the black.

THE WITNESS: Yes. I would like the opportunity to have a couple of months.

MR. LOWE: I do want to ask some questions.

THE JUDGE: Go ahead, Mr. Lowe.

EXAMINATION BY MR.LOWE:

Q You have in a sense been asked by Mr. Weintraub and Mr. Benenson to look into a crystal ball to determine what the operations for this company will be for the next thirty, sixty or ninety days; is that correct?

A Yes.

Q Do you consider yourself a good crystal ball gazer or prognosticator?

MR. WEINTRAUB: Objection, are

we going to play with words or what?

THE JUDGE: I think he understands what he means, does he think he can predict with some accuracy.

A Of course -- I just don't consider that to be a very fair question.

THE JUDGE: I can't hear you.

A I don't consider it really to be a very fair question. I don't believe in guessing.

THE JUDGE: Answer it as best you can.

A I don't believe in guessing. I do believe in my own ability, sir.

Q You have been guessing; have you not?

A Well -- but I didn't say that I -- I would rather be able to tell you for sure that I am going to do X dollars of business and we are going to have X pounds of material available to us. I qualified when I had to qualify for you.

I think that I'm a reasonably good understander of the human motivation and I believe that an interested and understanding, concerned supplier will come forth and supply us with raw materials.

I believe that I am a reasonable enough salesman to crystal gaze as to the availability of business.

THE JUDGE: You might as well ask another question.

Q I show you a paper marked affidavit under rule 11-2 sworn to apparently before a notary public on October 20, 1976 and I ask you if that is your signature (handing)?

A Yes, it is.

Q You would not have signed this statement unless it was true; is that correct?

A To the best of my ability, yes.

Q Do I understand your testimony to be that your business is seasonal?

A Yes.

Q Tell me about the seasons?

THE JUDGE: Mr. Lowe, you'd help the court, if you could, because it is ten minutes to 4, just to zero in on the prospects of any kind of a profit within the next thirty to sixty days and

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let the court entertain the idea as to whether or not there ought to be indemnity imposed.

MR. LOWE: I will do that but I would like to have deemed marked in evidence this 11-2 affidavit that was filed by the debtor and sworn to by Mr. Rosenblum, wherein he sets forth the reasons for the debtor's difficulty at that time and what his prospects are.

THE JUDGE: Since it is part of the official papers, it may be deemed marked in evidence.

MR. LOWE: I am sure Your Honor will consider this witness' testimony and predictions with regard to the operations of the business in light of the estimations and predictions he made on October 20th.

THE JUDGE: You can be sure.

THE WITNESS: Mr. Lowe -- can I respond?

MR. WEINTRAUB: No, wait until

a question is asked.

Q Is this a copy of the operating statements that were filed with this court on Friday last (handing)?

A They appear to be, yes.

Q Were those signed and sworn to by you?

A Yes. Those are unaudited statements.

THE JUDGE: You did sign the document?

THE WITNESS: Yes.

THE JUDGE: That is your signature?

THE WITNESS: Yes.

MR. LOWE: These have been filed and I respectfully request that these be deemed marked in evidence.

THE JUDGE: All right, they may be deemed marked in evidence.

BY MR. LOWE:

Q Have you withheld all tax monies pursuant to court order and the direction of this court?

A Have we withheld tax monies? We have paid our taxes.

Q Have you been complying with the orders of this court with respect to withholding taxes?

A Yes, we have.

Q All taxes have been properly withheld and deposited in depository accounts?

A To the best of my knowledge, yes.

Q To your knowledge, there remain no unpaid taxes by this debtor and debtor in possession; is that correct?

A To the best of my knowledge, that is true.

Q Do you have the depository receipts for taxes deposited pursuant to a court order?

MR. WEINTRAUB: I object.

THE JUDGE: I will allow the question.

A Yes.

THE JUDGE: It is in the affidavit.

Q Where are they?

A They are in this courtroom.

MR. LOWE: May I respectfully

request that they be filed with the court?

THE JUDGE: Do you doubt that they have been withheld?

MR. LOWE: Judge, I want to make sure.

MR. WEINTRAUB: I question the relevancy.

MR. LOWE: I don't see how anybody can be offended by that.

THE JUDGE: I am sure they won't be offended.

MR. WEINTRAUB: We have them, we will file them.

MR. ZIMMERMAN: For whatever the purpose might be, they are here.

THE JUDGE: Just have them marked.

MR. LOWE: You don't have to mark them, I will be satisfied if they are filed with the court.

THE JUDGE: All right, they can be filed with the court.

Q Would you read into the record,

please, what your operating results have been for the period specified at the top of these pages?

MR. WEINTRAUB: I object, once again we are being redundant. I have given a figure of an approximate amount.

THE JUDGE: Let Mr. Rosenblum recite the amounts for the period and we will have an accurate tally.

MR. LOWE: I am interested in the tally.

MR. WEINTRAUB: It is in evidence, too.

THE JUDGE: I understand. You are starting from the five-week period of November. Is that the first page?

THE WITNESS: Yes -- no, I have October 21st through October 24th, $261,000.

Q What period is that?

THE JUDGE: October 21, 1976 to October 24th.

Q Just give me the bottom line,

please.

THE JUDGE: What you want is the net income.

MR. LOWE: Yes.

THE WITNESS: $39,910.

Q That is a profit; is that correct?

A Yes.

Q For what period?

A That's for the period October 21st to October 24th.

Q Four days you made a $31,000 profit?

A Yes.

Q Go on with that, will you please?

THE JUDGE: Are you reading the bottom line on that page?

THE WITNESS: I am.

THE JUDGE: The next period.

THE WITNESS: $1,300,000 -- I'm sorry, just bottom line. $180,000 loss.

Q What period?

A For the five weeks ending November 28th. For the five weeks ending December 31st, $331,000 loss.

THE JUDGE: How about $332,000?

THE WITNESS: $332,000. For the four weeks of January, $198,000. For the five weeks in February, $212,000.

That was for the period ending March 6th, I think.

THE JUDGE: Correct.

Q Do you know what your net sales have been for the period October 21st through March 6th, 1977?

A No, I haven't totalled them but it would be --

Q Take a look at my numbers for a couple of minutes and see if I'm right. See if my analysis of your figures are correct?

MR. WEINTRAUB: I object to that once again.

THE JUDGE: He is entitled to develop some evidence that the assets are being dissipated during this period and --

MR. WEINTRAUB: The question is what is happening for the next thirty or sixty days.

THE JUDGE: I know.

THE WITNESS: Your figure shows that we did $3,800,000 in volume and we lost a total of $813,000.

Q Are those figures correct?

A I don't know.

Q Are these reasonably correct?

A They are reasonably accurate, I would say.

Q Is it not correct that on the basis of the figures contained in your operating statement these debtors are losing 21¢ on every dollar of sales they make?

Look at my figures, if you please, and if I am wrong I will be happy to be instructed by you.

MR. ZIMMERMAN: Your Honor, I object to these questions. You know, this is not a trial of some adversary proceeding with counsel's tricks, which ignore business realities, should be condoned.

THE JUDGE: Mr. Zimmerman, isn't

the issue here as to whether or not the court ought to impose indemnity if there is some risk of the assets of the estate being dissipated by allowing him in Chapter XI, the creditors are protected by the posting of an indemnity.

MR. ZIMMERMAN: Absolutely but counsel should not be playing tricks to confuse the witness and the court.

It is very obvious on a very elementary level that you get gross sales and then you take off general overhead. To say that you are losing on your sales when you don't take into account what your overhead is 21¢ a pound.

The debtor's problem is volume and he has indicated such.

THE JUDGE: I understand but let the court inquire just a little bit.

BY THE JUDGE:

Q How do you expect to make a profit, let's say, after the next sixty days? Do you think you need sixty days to turn the company around. You think there will be additional losses for the next --.

A If I had adequate supply of raw materials--

Q How do you expect to get it?

A You will be receiving a petition, hopefully within the next twenty-four or forty-eight hours that will outline that methodology.

Q Tell me about it.

A We hope to be able to find a supplier of material who would be willing to take the collateral of either that raw material or an equivalent amount of poundage of finished product from our inventory as collateral for the purchase of raw material on terms.

To that extent we anticipate, we hope that the verbal willingness of the first secured party, Commercial Trading, will permit us to do this and the second question secured party, Sumi Tomo, will not object to it.

THE JUDGE: Is Commercial Trading represented in court today?

THE WITNESS: They are not, that I know of.

MR. WEINTRAUB: I have spoken to Commercial Trading and they have consented to such a transaction. As I indicated, this is not prejudicial. It is new material that is coming in and they are just taking a purchase money security interest in that material and giving us credit for a twenty-one day period.

MR. TJIA: We represent Sumi Tomo, the second secured party. Just to correct the record with reference to Mr. Weintraub's earlier remarks and since it is relevant to the present proceeding, we would like to state Sumi Tomo will be opposing any application Precision is to make in the next couple of days on this question.

THE WITNESS: Will or will not?

MR. TJIA: Will oppose.

THE JUDGE: You are in the second secured position, are you?

MR. TJIA: That's right, I am sure

Precision will be challenging our security position. We realize there may be some problem but we believe our position is strong, that if there is any challenge, we will be happy to prove it with documents.

THE JUDGE: The court will take a brief recess and then we will go on. I may be prepared to make a ruling on indemnity when I come back.

Off the record.

(Discussion off the record.)

MR. WEINTRAUB: May I correct one misconception which might have come out from Mr. Rosenblum's testimony which I think Your Honor reiterated before you left the bench.

Mr. Rosenblum was asked, I believe, by you if it was his testimony it would take ninety days to turn this business around and I think he might have been confused. Under my questioning, I believe he said this business could be turned around in thirty days if he had the raw materials. That it might take ninety days to see the actual results of what could be generated in the way of available cash but that the minute he has the raw materials, in that first thirty-day period, profits would be shown.

MR. LOWE: Is that your testimony or his?

MR. WEINTRAUB: That was Mr. Rosenblum's.

THE JUDGE: I will hear from Mr. Rosenblum.

THE WITNESS: Your Honor, I responded I guess incorrectly to your question with truly the misunderstanding, I was looking for ninety days to operate the company and show what we really can do.

The only point I'd like to bring out right now is that on day one, on the day that we get adequate raw materials to keep all of our equipment functioning twenty-four hours a day, that is the day that we will start making money.

Our problem is right now that we have equipment at three facilities, three facilities that are left, that are down, unused and we have a burden on those facilities that is being absorbed by lack of sales.

THE JUDGE: You think within a short time after you are able to get some raw materials that you will generate enough cash to show a profit?

THE WITNESS: Yes, the nature of our business is such that there is very little work in process. The stuff leaves the lopper cars, goes through the extruders, becomes finished product and that all could effectly be done in forty-eight hours.

By the time that material is taken, collated into complete orders, may be another week or ten days go by. That's why I feel we confident we can pay in twenty-one days a supplier for

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product because --

THE JUDGE: What is the nature of the order you expect Mr. Weintraub to present in the next couple of days?

MR. ZIMMERMAN: May I speak to that?

The debtor in possession has been having discussions with a number of suppliers of resin across the country. The proposition has beenput to them and has been, I believe, accepted by at least one and hopefully several others would be one under which they get -- they will deliver resin on terms of twenty-one days from delivery to the buyer's plant and receive a purchase money security interest in that resin, in the product of it, the inventory --

THE JUDGE: In other words, the pipe as it comes out the other end?

MR. ZIMMERMAN: As it comes out, or the equivalent since all the pipe and resin is fungible and that will be sufficient security for them to give twenty-one day terms.

What we propose to do within the next day or so is to submit to the court -- we will give notice of the submission to Commercial and to Sumi Tomo not because we believe that they are entitled to it but we believe that it effects them in any event but out of courtesy because we believe a purchase money security interest given upon notice to existing secured parties has priority over them under the terms of the uniform commercial code.

We will be submitting a blanket authorization order with a formal security agreement to Your Honor within the next two or three days.

BY MR. LOWE:

Q The orders you told me about that
you have, are those written orders?

A Yes.

Q Where are those written orders?

A They are located at our Charlotte, North Carolina facility.

Q How much do you have in written orders?

A I have 1,689,000 pounds.

Q What are the terms of those orders?

A Payment terms?

Q When do you have to make delivery? Are they open ended, you can deliver whenever you want to?

A Within a reasonable length of time.

Q How long have you had those orders?

A Those orders have been coming in, growing over a period of say three weeks.

Q What is the earliest of the orders you have, three weeks, is that correct?

A There may be orders that predate that, I don't know.

Q How far back?

A Mr. Lowe --

Q How far back do those orders go?

A I don't know offhand but certainly -- we

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were out of orders in January, we didn't have any business in January, so it had to be February, March -- and March.

Q Your operating statement runs up to the period March 6th?

A Yes.

Q We are now three additional weeks into March. What do your operations reflect for the additional three-week period?

A Well, we are doing -- we are converting material at the rate of about 36,000 pounds of material a day.

Q Are you losing money?

A Yes.

Q How much are you losing?

A We are losing money at the same rate we were losing it and I would say March would be equivalent to $200,000, $150,000 to $200,000 loss.

Q Except the fact that you are currently losing 21¢ on every dollar's worth of sales?

A I haven't worked that out.

Q Well, think about it and let me know.

THE JUDGE: It is all right, Mr. Lowe, I got your message. While ordinarily -- I am concerned about the history of losses that are reflected in the operating statement.

However, the theory of a Chapter XI is to give a debtor in possession some reasonable opportunity to turn the matter around and see whether or not he can possibly come out with a plan of arrangement.

I am not one that likes to act precipitously on these things, even though I realize that this matter has been before the court since November or late October.

MR. LOWE: October 20th, Judge.

THE JUDGE: I will hear from the creditors committee as to what they recommend.

MR. BENENSON: I just checked with the chairman of the committee. The committee has analyzed as best it could the assets of this company, the security position and recognizes the precariousness of its position in the event of an adjudication.

My instructions at this time were not to press for indemnity by the chairman of that committee. The recognition appears to be that the only way this committee is going to have a plan to work with and be able to present some definitive dollar or percentage of a dollar to the other creditors is to permit this company to have a reasonable opportunity to work out its problems.

We do know that there may be a cyclical effect in this business. On top of that cyclical effect there has to be obviously some changes in the direction of the company. Hopefully this committee together with a court appointed certified public accountant can give that direction and that impetus to this company.

We should know, perhaps in early spring, whether this company is going to live or it's going to die. It would appear to me that at this time, representing those creditors, it is our position that we should give it a reasonable opportunity to see whether or not these projections have any hopes. If they do not make it in the springtime, that's something else again.

THE JUDGE: Are Mr. Lowe's clients represented on your creditors committee?

MR. BENENSON: No.

THE JUDGE: Mr. Lowe, I am going to deny your request for indemnity without prejudice. You may renew it at the next adjourned meeting, the adjourned first meeting as well as the adjourned XI-4 meeting.

I am disturbed about the history of losses, as I said previously, but I do want to give the debtor in possession some opportunity to demonstrate that it can obtain raw product and deliver product and possibly turn the matter around.

This will be ripe for reconsideration

thirty days hence, which I contemplate would be the reasonable period of time for the adjourned first meeting. If you care to appeal from that order, you can use the record that I have just made.

MR. LOWE: I will of course have to consult with my clients on that.

THE JUDGE: Of course. Let's turn to the problem --

MR. LOWE: Is there going to be a direction with respect to the filing of of operating statements?

THE JUDGE: Yes, this comes up to the period of March 6th. How soon is it feasible to file the operating statements?

MR. WEINTRAUB: If I understood Mr. Rosenblum, normally by the rules of this court the next statement would be due on the 15th of April. They use a reporting period from the 6th to the 6th apparently.

I would request --

THE WITNESS: No, it is a fiscal

month, alternating a five-four week.

MR. WEINTRAUB: When is your next five-week period over?

THE WITNESS: It would be April -- I'm not certain, the first week in April. I am awfully sorry, it would be the second week in April. I will find out and instruct --

THE JUDGE: No, I am going to order you to file it before the next adjourned first meeting.

If today is the 28th of March and we meet again onthe 25th of April or 26th of April, I will order you to file those operating reports by the 21st of April.

MR. LOWE: May I respectfully request that the operating statement be filed inthe form required by the rules of this court.

MR. LOWE: This doesn't even deserve to be dignified as an operating statement.

THE JUDGE: All right, we will incorporate Mr. Lowe's request that it be filed in accordance with the rules.

MR. WEINTRAUB: I take it that Mr. Lowe is referring to the fact that there is not a statement of expenses annexed to it?

MR. LOWE: This is not an operating statement.

THE JUDGE: But it was informative to the court for the purpose of today's hearing.

Mr. Weintraub, you also have an order to show cause and you want to state what that is about?

MR. WEINTRAUB: This is an order to show cause which seeks approval by the Bankruptcy Court by Your Honor of what has now been deemed to be a settlement of the antitrust litigation in the District Court before Judge Knapp.

Judge Knapp found that the proceedings that transpired before Your Honor in chambers constitute a binding settlement, referred the matter back to Your Honor for a further hearing.

THE JUDGE: What do you understand this court is supposed to do here?

MR. WEINTRAUB: What we had brought on previously before Your Honor to determine whether the settlement, the quarter of a million dollars, in effect, is a reasonable settlement and in the best interest of the estate.

THE JUDGE: How do you propose to persuade me?

MR. WEINTRAUB: I believe Your Honor was persuaded when we were in chambers and this settlement was dictated at a quarter of a million dollars.

THE JUDGE: That is a bootstrap argument.

MR. WEINTRAUB: It is not a bootstrap argument.

We further believe that the litigation which is involved is timely and expensive and will involve the principal of this corporation among others in lengthy trials and pre-trials discussions is not in the best interest of the estate.

The settlement will bring into the estate initially $100,000 with $50,000 thereafter per month until the $250,000 is paid.

As we indicated in the moving papers, the time in hearing the litigation, the possibility of not being successful in the litigation, the expenses inherent in that litigation of having antitrust counsel involved, all would seem to indicate that a settlement should be reached.

THE JUDGE: What was to happen to the proceeds of that settlement?

MR. WEINTRAUB: That was a matter which under the order which was proposed at the time we came before Your Honor was to be subject to further order of the court.

The committee had voted to

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approve the settlement as proposed subject to the condition that the proceeds could not be used except upon further deliberation of the committee and the court.

THE JUDGE: Is that in the transcript of the record?

MR. WEINTRAUB: That is not in the transcript of what transpired before Your Honor in chambers.

Mr. Benenson had gone back to his committee and had received the committee's I believe unanimous approval, Mr. Otte, secretary to the committee, had polled the committee and their consent had been based upon the fact that the money would not be used except upon further order of the court.

I don't believe that the settlement of a quarter of a million dollars or the reasonableness of that settlement should in any way be affected by what the committee may let us do with that money. It is still a quarter of a million dollars in the till and I believe that we can support to the committee that with the use of some of those funds the debtor can obtain the needed raw material to make the company profitable.

If we make the company profitable, these third parties that are out there that we have been meeting with are going to be more likely to come into this situation and perhaps make an investment which will fund a plan for creditors.

THE JUDGE: Well, as a practical matter, Mr. Lowe has already stated that he has appealed from Judge Knapp's opinion.

MR. WEINTRAUB: I would like to make Mr. Lowe's appeal perhaps a little more effective for him. I believe he is appealing from an interlocutory order.

All that order of Judge Knapp does is referring it back to here for approval. It has not granted -- it has granted summary judgment on the issue of liability but in effect the client has not been substantively effected because it is not a direction to his client to pay a quarter of a million dollars.

If this court, the Bankruptcy Court, finds that the settlement is reasonable and in the best interests of creditors, at that point we would enter a judgment based on that, which I assume Mr. Lowe would likewise appeal from.

At the moment that appeal I believe is somewhat academic until this court has found that the settlement is in the best interest and reasonable.

When we were before you last time you said you could not act upon that question because you did not see a settlement before you. Judge Knapp has said, yes, there is a settlement but it is now subject to the Bankruptcy Court's paramount jurisdiction to determine whether that settlement is in the best interest and reasonable. There is no party objecting to the settlement. We still want to press forward with it.

I believe the creditors committee's position is still the same as it was back at the last hearing date, that the settlement should be pressed forward and we should be able to obtain those funds.

THE JUDGE: I am going back now to your argument that these $250,000, if they were available, would be helpful in getting the debtor in possession in a position where he could buy raw materials, produce pipe and make a profit.

MR. WEINTRAUB: That is only one --

THE JUDGE: I still see it a long way down the line.

MR. WEINTRAUB: That is only one of the arguments. It still brings in, whether it comes into the use of the debtor in possession or not, a quarter of a million dollars. If they restrict us from using those funds, those funds are still set aside, we no longer have to go forward with litigation, we no longer have to pay counsel to defend motions that are going to be made by the other side against this debtor, to appear in other jurisdictions on another motion for venue that is now before Judge Knapp.

We now have a situation where Judge Knapp says it's been settled, which means that he is not going to go further forward on that litigation and something has to be done in this court. Unless some party comes forward with cogent grounds to object to that settlement and I know of no party in interest here that is objecting to it, I believe it should be approved by this court.

I just see no grounds at all for denying the application. Mr. Lowe certainly has no standing to object to this settlement. Judge Knapp has told him he entered into a settlement. Now it is for the court to determine whether that settlement is in the best interests of the estate and reasonable.

The debtor is here saying it is in his best interests or in the company's best interests, the creditors committee believes it is in their best interests; counsel to the debtor and special counsel believe it is in the best interests of the debtor.

So I really see frankly nothing further for Your Honor to do but to find that it is in the best interests of the estate and let us proceed from there, which would be the entry of judgment against Robintech and enforcement of those judgment proceedings.

THE JUDGE: Does anyone else want to be heard?

MR. LOWE: If Your Honor pleases, so far as the pending motion before Your Honor, I think it is obviously premature.

There is an appeal pending from Judge Knapp's order. What he sent back here was inextricably interwoven in connection with what he did with the motion for summary in the antitrust suit. I don't think it requires any extended argument to establish that.

Now, if we can just back up a moment, there were discussions which one party contends culminated in an agreement and which we contend did not result in an agreement. The discussions were between the debtor and the clients I represent.

The court was never at any time bound by those discussions. So far as I know the court at no time indicated what action it would take with respect to those discussions.

As a matter of fact, it was expressly contemplated at that time that notice would be given to all creditors and it would be subject to the approval of this court. Now, on March 16th Your Honor filed a decision transferring this proceeding to New Jersey.

At that time you were completely mindful of the fact that there was pending before Judge Knapp, undetermined, the motion for summary judgment and the appeal from your order. As I understand it --

THE JUDGE: Let me correct you, Mr. Lowe.

No one serves copies of the appeal on me or on my clerk. It was only through word of mouth that I had understood that there was an appeal taken. I never see any of the papers. I did not know what the nature of the appeal was and frankly I was a little surprised to find out it was a motion for summary judgment, but there you are.

MR. LOWE: Then am I wrong in my understanding that Your Honor was aware of the pendency of that appeal?

THE JUDGE: I was aware that something had been appealed to Judge Knapp but I wasn't aware of what the details were. When I treated with the change of venue or the motion for change of venue, I dealt with just the facts before me on my record.

MR. LOWE: Yes, and I assume Your Honor in doing so felt you had a right to proceed independently of anything that was being done in the District Court.

THE JUDGE: I am sure that is so.

MR. LOWE: Your Honor has a right sua sponti to transfer a proceeding or to dismiss it if you deem it advisable. So I don't see what Your Honor did as being inconsistent in any way with what Judge Knapp did.

THE JUDGE: I don't know that anybody has argued that.

MR. LOWE: So far as I know there is an order of this court transferring this proceeding to New Jersey.

THE JUDGE: Yes.

MR. LOWE: If Your Honor recalls, the settlement was approved by the creditors committee conditionally. They wanted the $250,000 so they could squirrel it away in order to avoid its loss by the debtor in its operations.

I must confess in retrospect their thinking was good, at least on that subject, Your Honor. I don't think Your Honor would go ahead with the consideration of the pending motion in view of the pending appeal.

Certainly, I think Your Honor should give serious consideration that notice of this alleged settlement be given to all creditors. Don't forget, Your Honor, creditors don't know what has happened in this courtroom today. They don't know that this debtor burned up $900,000 since October 20th. I think they should be given an opportunity to consider what this debtor should or would do with the $250,000 it does get if ultimately it is determined that there was in fact a settlement.

THE JUDGE: How many creditors are there, Mr. Weintraub?

MR. ROSENBLUM: About 700 creditors.

MR. LOWE: We have been talking about the money being used from this settlement to fund the debtor's operation so that he could make a turn-around. That is not so.

Now, let me give you an example, if I may, of what is going to happen to any of the money that this debtor gets. You have on your calendar this afternoon two adversay proceedings, reclamation proceedings to recover lease rental payments that this debtor has not made over a period of seven months.

Miraculously, that adversary proceeding has disappeared. Do you know why?

Because that reclaiming creditor is getting paid $15,000. That is what --

THE JUDGE: Out of what fund or where?

MR. LOWE: Well, maybe we ought to find out about that. If I am mistaken in any statement I have made, perhaps counsel for those reclaiming creditors will correct them.

MR. RUDERMAN: The proceeding he is referring to are the two proceedings I brought on behalf of Associates Commercial and Associates Leasing. I have appeared before you a number of times and last week we had a lengthy discussion when I reported that the payments on these various machines which are important to the business of the debtor had not been made for January, February and March.

At that time I believe that you directed the debtor to make payments. I don't have the transcript in front of me but using such language as you could not live off the back of the secured creditors and these payments had to be made or you would grant our application to take the machinery back.

During the course of the week I had negotiations with Mr. Zimmerman,

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which only reached fruition today.

I had been handed payments from Mr. Zimmerman which are as follows: a current payment for January, by that I mean checks drafted prior to March 28th; a delayed payment for February on checks dated April 6th, 1977 --

THE JUDGE: These are all during the period of the Chapter XI proceeding.

MR. RUDERMAN: Yes, strictly post-Chapter debt, ongoing use and occupancy, if you will, and an additional set of checks to cover the March payments dated April 18th.

I have my client in court today from Pittsburgh and we negotiated with Mr. Zimmerman and his client. We have agreed to accept these checks and not to press further with the various remedies that we discussed with you last week on this particular item based upon the representation of the debtor that these checks will in fact be paid when they are submitted for payment in due course. I think this is the allocation.

Each of the month's payments approximates $4,800. That's where the figure of approximately $15,000 arises.

MR. LOWE: My point is where is the money going to come from to pay this plus a lot of other things which we ought to find out about.

THE JUDGE: Well, certainly, a landlord ought to get paid while a debtor in possession is using the premises.

MR. LOWE: I agree with you but they are not using the money they hope to get from the alleged settlement to operate this debtor, they are plugging up holes. They are issuing notes, they are covering notes and I would bet a dollar to a donut there are other such obligations.

That's what the money is going to be used for. It is not going to be used to buy material to continue the operation of this debtor.

MR. WEINTRAUB: It is not going to be used for anything if the creditors committee and the court does not allow it to be used for. What Mr. Lowe is saying obfuscates the issue that his client is obligated to this estate for $250,000.

The question is whether or not the settlement is or is not in the best interests of the creditors.

The committee represents fifty percent of the dollar amount of the debt. All I can do is indicate when we settled this in your chambers one of the important considerations, both in chambers and in open court on the last day we had the hearing to consider the offer, when Your Honor refused to consider it, was that the venue would be withdrawn, the challenge to venue would be withdrawn.

We indicated why it was important to keep it within the Southern District of New York. That was an important part of the consideration. Judge Knapp in his decision now has said with respect to the appeal from Judge Galgay's refusal to conduct proceedings to approve the terms of the settlement, we believe that question is now moot in light of our finding that there was an enforceable settlement agreement.

Judge Galgay quite properly decided that he could not conduct such proceedings until the legal effect of the settlement had been determined.

Now, the legal effect of the settlement has been determined, we are back here on the exact same application we were here the last time before you.

We believethe settlement is in the best interests of creditors, nothing Mr. Lowe has said cannot indicate it was not in the best interests of the creditors. He is the party who owes the money so of course anything he says is going to be taken --

THE JUDGE: Doesn't the use the money is going to be put to have any bearing on whether or not it is in the best interests of the estate?

MR. WEINTRAUB: We are not deciding at this point what use that money will be put to. That money will come in and be subject to further order of the court and the creditors committee. If I can go to the creditors committee and say with about $50,000 of this money, we can make a profit of $100,000 next month, I would deign to say that the creditors committee would say, yes, make an application to the court to use that money.

Meanwhile, if we don't have the settlement, we are going to be in the position where something is going to go forward in the District Court, I don't know what, maybe the antitrust litigation just sits there but meanwhile we are in limbo.

Judge Knapp has said something is to be done here. Either the settlement is to be approved because it is in the best interests or Your Honor disapproves it because it is not in the best interests of creditors.

THE JUDGE: Apart from the money, part of the settlement arrangement was that the challenge to the venue would be withdrawn, was it not?

MR. WEINTRAUB: That is correct.

MR. LOWE: Your Honor was not bound by that and I presume what you did you did in the furtherance of what you considered should be done here, apart from any alleged settlement between the parties.

MR. WEINTRAUB: Your Honor, I certainly think -- the law of it says it is not set down on the venue.

THE JUDGE: It was no withdrawal of money but on the challenge of venue but unfortunately I decided the venue

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problem just a day or two before Judge Knapp handed down his opinion.

I will hear from the creditors committee as to what their attitude is.

MR. BENENSON: If I may address myself respectfully first to the procedure. It would appear that Judge Knapp has ruled that there is what is classically an agreement, a meeting of the minds, with a condition subsequent and Your Honor is the condition subsequent.

So the first thing we have to determine is whether Your Honor finds that it is in the best interests of this estate to accept the $250,000, which Judge Knapp now says was offered unconditionally except pursuant to Your Honor's approval.

That's the only condition. So Judge Knapp has ruled there is this meeting of the minds with the condition subsequent. That should be the first part that we should address ourselves to.

Otherwise you may be taking an appeal on this issue and in Your Honor's mind you don't think it is in the best interests of all the parties and there is no sense jamming up our appellate courts with something rendered moot by Your Honor's thinking.

THE JUDGE: You tell me why you think it is in the best interests of the estate.

MR. BENENSON: The committee has made a business decision, representing fifty percent of the unsecured creditors. We do have people on that committee who I believe have very sound business acumen. They came to a logical conclusion.

THE JUDGE: Has anybody realized the value of the antitrust suit?

MR. BENENSON: There was conferences with members of the creditors committee with an expectation that a pool of monies could be realized from the members of the committee to retain a special law firm to come in and analyze the antitrust suit and give us their independent analysis.

At that time the appeals were going, everything was swirling around and actually, no independent analysis of the antitrust suit has been made.

I don't have the expertise to do it myself and I felt it incumbent upon me to seek more professional advice. Whether there is really more to this than the antitrust suit, I don't know. But even if we make that determination, even if we conclude there is merit to the antitrust suit, we have to look to the practicalities.

Number one, is the time. Number two, is the business talents wasted from this business, plus the expense of that litigation and the committee, even presented with a fifty-fifty shot at a recovery here, would have to face the eventual problem, where is the money going to come from. So we came to a business decision, which was take the $250,000, swuirrel it away as counsel says until we make a business decision how it can best serve the interests of all the parties.

Therefore --

THE JUDGE: All the parties including the debtor in possession?

MR. BENENSON: Well, when I say all the parties, I only represent the creditors who are unsecured and that's the people I have to focus on. Those are my clients.

THE JUDGE: Yes, but you heard Mr. Weintraub suggest that even if the money were swirreled away they might be in there conferring with you and the creditors committee to see if they could pry loose portions of that to use to buy inventory for the establishment of product.

MR. BENENSON: If that makes sense, that we have to prime this pump, then perhaps we will sit down with the accountant, sit down with the debtor and if he says we need $50,000 and here's how we are going to make a quarter of a million dollars with that $50,000, we will have to come to that conclusion. That is out of my realm, I will leave that to the business people, to look at it and analyze it. If it makes sense to the business people, then I will be in favor of it and I will be asserting it here before this court.

I am somewhat astonished that I hear Mr. Lowe, who at this posture represents a debtor to the tune of a quarter of a million dollars of this estate worrying how this estate is going to use his money, which he refuses to give.

So it is a very interesting position Mr. Lowe has taken.

MR. LOWE: I am an amicus here today.

MR. BENENSON: Not only is he an

amicus, I have never seen a man not in the haberdashery business wear so many hats and I have watched him with great interest. He has asked this debtor and told this debtor he can't use this money, which he is not going to give them, so I am somewhat troubled by Mr. Lowe's position.

As far as the creditors committee is concerned, we wantto stop the diminution and wasted energy of this litigation. The creditors committee, has said they have never seen a Chapter XI where there was heavy litigation, where the litigation resulted in a substantial dollar flow to the creditors.

They want this litigation plugged, they want the representatives of the debtor to get busy and sit down and focus on our problems and when I say our problems I mean the creditors problems, because that's what Chapter XI is all about. It is not the furtherance of litigation, it is about a debtor sitting down and making peace, if it can, and we want to see that go forward.

MR. RACKEAR: I think really the question is getting so obfuscated that I am both amused and chagrined. I would think the question before the court right now is not whether the debtor will be frittering away $250,000 or whether it will use it productively but rather whether these defendants will be ahead $250,000, unjustly enriched.

I think the question really is whether or not this debtor is in the position to proceed with that litigation. I am not prepared to do it on a contingency. We have tried for several months to obtain other counsel that would be prepared to do it on a contingency and I think that if this settlement is not enforced and these proceeds do not come in, then it will simply mean that Robintech and the other two defendants will be ahead $250,000. I don't think it really is germane as to how these funds will be used. I think that's for the court to determine, with the help of the creditors committee but we do know that Judge Knapp has ruled that there was a settlement and these defendants are indebted to this debtor in possession to the tune of a quarter of a million dollars.

That should be enforced.

THE JUDGE: So in short all you are saying is that you never resist a generous impulse, if you have $250,000, for heaven's sake, take it. There are no other issues involved.

MR. BACKEAR: No, Your Honor, I think that is kind of glossing over it, if I may respectfully say. I think where we are at is we have a debtor in extremis. unable to meet its obligations.

Even today it is still engaged in a battle, in a tug of war with these very same objectors. It is a question of survival of this company and if $250,000 will help it survive, then I think it is certainly in the best interests of this debtor. Certainly we would hope that the settlement would have been $500,000 or $750,000. If this company were prosperous, if it were in a position where it could effectively prosecute and continue to prosecute this antitrust case and wait maybe three or four or five years down the pike, it would do it.

We feel that we have a good case. I don't think that these debtors, or I should say these defendants, agreed to pay $250,000 because they liked Mr. Rosenblum or Precision or me. I think they paid it because they felt that there is some merit to our position. They can call it nuisance value or whatever but we feel that this is a settlement that we are entitled to have.

THE JUDGE: All right, Mr. Lowe.

MR. LOWE: Judge, I am somewhat familiar with your practice and procedure in connection with submissions of offers of settlement.

I would be surprised if Your Honor did not insist upon any offer of settlement being submitted to creditors for their approval. I am not talking about the eight or nine creditors on the creditors committee. There are seven hundred creditors here who have a right to be informed of what's been happening.

I am confident that Your Honor would have insisted upon notice in connection with these proceedings, apart from the fact I think it is premature for you to go ahead with it at this point.

I just want to correct the statement that was just made by counsel. My clients are not going to get away with anything, Your Honor. If it is ultimately determined that there was in fact a binding agreement, they will be obligated to pay and I believe they will pay. They may have to pay it to a trustee in bankruptcy or a receiver in New Jersey. They are not getting off the hook on $250,000.

If it is ultimately determined after appellate remedies are exhausted that Judge Knapp is right, they will be obligated to pay.

THE JUDGE: Let me deal with the problems as they occur to me.

Number one, the decision that I made transferring the matter to New Jersey, that decision has been stayed from implementation by virtue of this hearing today. I am going to suggest to Mr. Weintraub that he submit another order requesting me to withdraw that opinion pending resolution of the matter in Judge Knapp's case.

MR. ZIMMERMAN: I believe this order to show cause which Your Honor signed returnable today does ask for that relief. It does ask you to set aside, to re-hear, to vacate Your Honor's order of March 16th, that is the part of the relief that we have requested, in addition to the approval of the settlement offer.

In terms of steps, if this court should authorize and approve the settlement, then based upon that, which would include a withdrawal of the motion to dismiss or transfer on that basis, we would ask the court and these papers do ask the court to vacate its order of March 16th.

THE JUDGE: Well, I don't have to do that this afternoon. We will continue this hearing tomorrow afternoon, but be prepared tomorrow afternoon to bring in a separate order in substance withdrawing that decision pending a decision on the matter of Judge Knapp's reference because I am not going to rule from the bench, I am going to ask for additional information.

I will think about what will really be required to decide that.

Mr. Lowe raises an interesting point, do the creditors have to be notified of a proposed confirmation of an agreement. I don't know what other elements they may be other than those that have been discussed in court today that may affect other creditors.

MR. ZIMMERMAN: I believe that Rule 203F of the Rules of Bankruptcy Procedure permit the court to direct notice to an official committee and not to give notice to all of the creditors.

THE JUDGE: Is there an official committee here?

MR. ZIMMERMAN: Yes, you did, you did sign an order appointing an official committee.

MR. WEINTRAUB: There is not official counsel.

MR. BENENSON: I am the unofficial counsel to the official creditors committee.

MR. ZIMMERMAN: We have been very careful to observe the formalities required for presenting a settlement to the court. Notice meets the requirements set forth in the rules.

MR. LOWE: That order is on appeal, Your Honor.

THE JUDGE: You mean my order?

MR. LOWE: Yes.

MR. ZIMMERMAN: Mr. Lowe is much more experienced than I on these matters but it is my opinion that the decision of Judge Knapp is interlocutory in nature. No judgment has been entered on it and no judgment could be entered on it until Your Honor authorized and approved the compromise.

THE JUDGE: Did you seek a stay in your appeal from my order?

MR. LOWE: With respect to the creditors committee?

THE JUDGE: No, I have decided that it ought to be transferred to New

Jersey.

MR. LOWE: Did I file a notice of appeal?

THE JUDGE: Yes.

MR. LOWE: In complete candor, Your Honor, if a notice of appeal had been filed by the debtors I would have filed a cross-notice of appeal.

THE JUDGE: I am sorry, you are right, I was directing the question to the wrong party.

They have protected their interest by filing this order to show cause.

MR. WEINTRAUB: Which extends the time.

THE JUDGE: Friday would have been the last day?

MR. WEINTRAUB: I think the following Saturday would have been the last day.

THE JUDGE: What remains to be done for tomorrow afternoon?

MR. WEINTRAUB: That's what I was going to ask you, what further information you might want open from the debtor's point of view, Mr. Rosenblum's point of view or any members of the committee.

The order to show cause did call this meeting and authorize notice to be given to the creditors committee in lieu of all the creditors.

I don't believe any useful purpose except further time delay would be suffered by giving notice to some seven hundred creditors that Mr. Rosenblum indicates are involved here.

The large creditors are, of course, on the creditors committee. The little creditors who may average between $50 and $1,000 or $2,000, I'm sorry, are not going to have any concern in coming in on this settlement. This will rely upon the committee and committee's counsel and hopefully also the debtor and debtor's counsel as to being in their best interests.

So I don't know any purpose really

served by putting this over to tomorrow unless for Your Honor to further deliberate on this and rule from the bench.

THE JUDGE: No, I will not rule on it from the bench. I was going to call on you to submit proposed findings of conclusions and conclusions of law in approving the settlement.

I would invite Mr. Lowe to submit counter proposals if you care to.

MR. WEINTRAUB: I don't think Mr. Lowe is an appropriate party to submit counter proposals. He is not a party on an application to settle --

THE JUDGE: He is a party to that agreement, isn't he?

MR. WEINTRAUB: Judge Knapp found he is liable.

MR. LOWE: There are judges sitting on the seventeenth floor of this building who might have something to say about that.

MR. ZIMMERMAN: Until you get a

a stay of Judge Knapp's decision I would say that it is the law of this case and no stay has been granted to our knowledge unless you can show us one.

Today we have a contract of settlement. That is the latest, that is Judge Knapp's decision. We brought it on pursuant to Section 27 of the Act for this court's approval.

It is between the debtor and its creditors I believe to determine whether it is in the best interests or make the presentation to the court as to in their opinion if it is in the best interests.

The other side to this settlement has had their day in court, so to speak, before Judge Knapp. Now, obviously, they will still have a day in court before the Court of Appeals, as long as Your Honor approves it.

If Your Honor disapproves the settlement, then there is no settlement, there is nothing to be appealed.

MR. LOWE: We still have standing as creditors in this case, let no one forget that.

MR. ZIMMERMAN: You will stand on it.

MR. LOWE: I would like to make just one motion before we adjourn today.

I respectfully submit that on the basis of the submission in connection with the original motion to transfer and on the basis of the testimony you have heard today with respect to losses in operations, I respectfully move that the court sua sponti transfer the proceeding.

THE JUDGE: I decline that application, Mr. Lowe. I am concerned as to just what this court's obligation is with respect to Judge Knapp's remand.

I want the parties to appear before me again tomorrow afternoon at 2:15. Be prepared to make any proposed recommendations as to findings of fact, conclusions of law that will justify my approving of the settlement.

Mr. Lowe, I invite you to be prepared to tell me why I should not.

Whether other parties agree that you have standing or not, I will invite you as amicus in the event that it proves you do not.

MR. RUDERMAN: In my adversary proceeding I would consent they be carried to the next thirty-day hearing.

THE JUDGE: I will entertain a suggestion as to the next adjourned date for the adjourned first meeting and the adjourned XI-4 meeting.

MR. LOWE: May I respectfully request --

THE JUDGE: I will adjourn the adjourned first meeting and the adjourned XI-4 to April 26th at 11 o'clock.

MR. HAZAN: Can we carry our matter until tomorrow also?

THE JUDGE: I will put it on for

tomorrow.

MR. HAZAN: Will Mr. Rosenblum be present tomorrow afternoon?

THE JUDGE: Certainly.

MR. LOWE: I am going to ask that he be here.

THE JUDGE: Mr. Rosenblum, you will be here tomorrow afternoon.

MR. ROSENBLUM: I was hoping to be at a customer's meeting in Fort Lauderdale but I will be here if Your Honor so desires.

THE JUDGE: Please be here.

- - -

CERTIFICATE

I, IRWIN A MOORE, a Shorthand Reporter and Notary Public of the Stae of New York, do hereby certify:

That, MARVIN ROSENBLUM, the witness whose examination is hereinbefore set forth, was duly sworn, and that such examination is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

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XII

Transcript of Proceedings, dated March 31, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(In Bankruptcy)

In the Matter
of

PRECISION POLYMERS INC.
PRECISION THERMOPLASTICS INC.
FLO-TITE PLASTICS CORP.

Debtor

No. 76 B 2358
76 B 2359
76 B 2360

U.S. Courthouse
Foley Square
New York, New York

March 31, 1977

Adj OSC re: why an order should not be entered vacating order dated 3/16/77

Adj OSC re: why an order should not be entered accepting an offer to compromise litigation

BEFORE:

HON. JOHN J. GALGAY,

Bankruptcy Judge

RAYVID REPORTING SERVICE
CERTIFIED STENOTYPE REPORTERS
150 NASSAU STREET
NEW YORK, N. Y. 10038
CORTLANDT 7-3877
3878

APPEARANCES:

LEVIN & WEINTRAUB, ESQS.,
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225 Broadway,
New York, New York

BY: CHARLES WEINTRAUB, Esq.,of Counsel.
- and -
DANIEL ZIMMERMAN, Esq., of Counsel.

KRAUSE, HIRSCH & GROSS, ESQS.,
Attorneys for Robintech, Inc.,
41 East 42nd Street
New York, New York

BY: SHELDON LOWE, Esq., of Counsel
- and -
JOHN SCHEFFEL, Esq., of Counsel.

BERNARD RACKEAR, ESQ.,
Attorney for Precision Polymers, Inc.
et al.,
25 West 43rd Street
New York, New York

BY: GEORGE T. VOGEL, Esq., of Counsel.

OTTERBOURG, STEINDLER, HOUSTON & ROSEN, ESQS.,
Attorneys for T.F.I.,
230 Park Avenue
New York, New York

BY: SCOTT B.HAZAN, Esq., of Counsel.

- - -

MR. LOWE: Are we waiting for the attorney for the creditors committee?

MR. WEINTRAUB: He is in Trenton, he won't be here.

MR. LOWE: I would like the record

to reflect the absence of the attorney for the creditors committee, Your Honor.

THE JUDGE: All right.

MR. LOWE: Before proceeding, may I respectfully bring to Your Honor's attention Rule 62A of the Federal Rules of Civil Procedure.

THE JUDGE: Refresh my memory, that rule escapes me.

MR. LOWE: I will read it into the record. It is brief, Your Honor.

The rule is entitled Stay of Proceedings to Enforce a Judgment, Subd. A, automatic stay, exceptions, injunctions, receiverships and patent accountings.

"Except as stated herein no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of ten days after its entry."

Judge Knapp's order was not docketed with the Clerk of the District

Court until the 23rd of March and I respectfully submit that we are within the ten-day period at this point. The proceedings that were brought on by the debtor previously obviously were within that period and I respectfully submit they violate the provision of Rule 62.

May I just bring the rule to you if you want me to?

THE JUDGE: All right.

MR. WEINTRAUB: May I ask Mr. Lowe what the relevancy of that statement is?

MR. LOWE: It is evident to me at least what has been done here is an attempt to enforce the judgment within the ten-day period.

THE JUDGE: Judge Knapp's judgment?

MR. LOWE: Yes.

MR. WEINTRAUB: That is not so, all we are doing is trying to get a settlement approved that Judge Knapp said was a settlement. The judgment would have to be entered after the approval by this court of the settlement.

MR. LOWE: The judgment I am talking about is Judge Knapp's judgment.

MR. ZIMMERMAN: There is no judgment by Judge Knapp.

MR. LOWE: Judge Knapp granted summary judgment and inextricably interwoven with that --

MR. WEINTRAUB: That talks of execution, we can't enter judgment based on a determination by Judge Knapp that there was a settlement until this court first says that that settlement is in the best interests of creditors and approves the quarter of a million dollars.

There is nothing I can execute on or that anyone else can execute on at this point.

MR. LOWE: It doesn't relate solely to execution, it relates to proceedings in furtherance of that judgment.

THE JUDGE: Do I understand that you on behalf of your clients have appealed from Judge Knapp's order?

MR. LOWE: Yes, that was stated for the record the last time, Your Honor.

THE JUDGE: Yes, I thought.

MR. LOWE: An immediate appeal was taken from that judgment and order.

THE JUDGE: Not before it was docketed, I hope.

MR. WEINTRAUB: It might have been.

MR. LOWE: It might have been.

MR. VOGEL: No, it was not. My understanding is the appeal was filed on the 25th.

THE JUDGE: The 25th.

MR. VOGEL: I am George Vogel, I am with Bernard.

MR. LOWE: I think it was after docketing.

MR. VOGEL: I am with Bernard Rackear, general counsel. I have been designated by Your Honor's order. As

Mr. Weintraub said there has been no judgment here. What we are doing is acting in compliance with Judge Knapp's order for -- to apply to you for the further proceedings here.

I think Mr. Lowe has seized upon a rule that is clearly an opposite to this proceeding. I don't know -- it's obviously to the interest of Robintech and the people he represents to delay this matter as much as possible and these procedural motions I think should be recognized as such.

The venue -- the change of venue motion, their appeal of an interlocutory order, all of this is designed to cast confusion on this matter, Your Honor.

We have a client who is in this court trying to work out an arrangement and finds itself under the attack of a defendant in a suit that they brought long before this arrangement and this Robintech and the clients are diverting their officers and talent from putting together a plan and attracting capital and new financing and going after sales, attending sales meetings and scaring off sales representatives, employees, suppliers and not permitting the creditors committee to function for a long time in an official capacity; objecting to the accountants, Raines.

All of this, Your Honor, is designed to delay and to keep the client from operating.

Now, Your Honor, this court originated from a court of equity. I think it is about time that we went forward and took steps to salvage these debtors and not engage in these procedural technicalities.

Thank you, Your Honor.

MR. LOWE: Judge, what you have before you is predicated on Judge Knapp's memorandum and order. That has been appealed from and what is being done, Your Honor, is being done to enforce Judge Knapp's order. It is evident to me, Your Honor, that that comes within proscription of the rule which I just read into the record.

MR. WEINTRAUB: If I might, the last time we had this hearing, this was not raised by Mr. Lowe. We had a hearing on the question -- we started the hearing on the question of the reasonableness of the settlement.

Your Honor asked us to come back today with two things: Number one, an order vacating your order of March 16th --

THE JUDGE: Proposed order.

MR. WEINTRAUB: Proposed order, of course, and also proposed findings of fact and conclusions of law concerning the settlement of the $250,000 figure.

THE JUDGE: Let me inquire from all the parties so we won't be spinning wheels here.

Judge Knapp did send the matter

back and in the last paragraph, "With respect to the appeal from Judge Galgay's refusal to conduct proceedings to approve the terms of the settlement, we believe that question is now moot in light of our finding that there was an enforceable settlement agreement. Judge Galgay quite properly decided he could not conduct such a proceeding until the legal effect of the settlement had been determined.

Accordingly, we dismiss the appeal as moot and remand the bankruptcy proceeding to Judge Galgay."

MR. WEINTRAUB: Yes.

THE JUDGE: Now, if they remanded it to me, what did they remand it for? I gather to consider the settlement and whether or not it is in the best interests of the estate.

Is there any disagreement with respect to that?

MR. LOWE: Not on my part.

MR. WEINTRAUB: Not on my part.

MR. LOWE: Except it is being done pursuant to Judge Knapp's order which is on appeal.

THE JUDGE: Well, even so, is there any stay that would prevent this court from conducting a hearing which eventually would have to be done if his order is upheld?

MR. LOWE: I think that stay is in 62A, Your Honor.

THE JUDGE: Wouldn't it be more appropriate to go to the Court of Appeals and ask for a special stay of all proceedings rather than to have us operate in an uncertain area?

MR. LOWE: I think it is the purpose of that interim stay to permit that kind of activity to take place, Your Honor.

MR. WEINTRAUB: There is no prejudice to the defendants by having a hearing here now to determine the reasonableness of the settlement. What they are trying to do I think is avoid the necessity of posting a bond to the Circuit Court in the amount of a quarter of a million dollars to obtain a stay of enforcement. I can't believe that Rule 62 would displace the necessity of their filing a supersedeas bond to secure the judgment which can only be entered by us after a determination by this court that there has been a settlement.

Once again, I don't believe that their appeal in the Circuit Court is an appropriate appeal and we might have remedies in the Circuit Court as well. But I don't think anything could be clearer than what Judge Knapp has said, that he has sent it back here and I assume in Judge Knapp's mind he also considered the possibility that there could be an appeal to the Second Circuit from any decision that might be rendered in this court.

MR. VOGEL; Your Honor, I would also like to invite your attention to the provisions of Rule 58 which deal with the entry of judgments and which in relevant part say that the court will enter judgment unless the court directs otherwise.

The court has not entered judgment in this case.

THE JUDGE: You are talking about this court or Judge Knapp's court?

MR. LOWE: That judgment was docketed on the 23rd of March.

MR. VOGEL: Perhaps,Mr. Lowe, we are dealing with an inability to communicate with each other or to understand the meanings of words. But his memorandum and order was docketed on the 2rd. He did not enter judgment.

His decision was docketed. No judgment has been entered. That action is still pending in his court.

MR. WEINTRAUB: There is no judgment

in the District Court directing Robintech to pay a quarter of a million dollars.

MR. LOWE: No, but summary judgment was granted.

MR. VOGEL: He granted it to the extent indicated, which was to say that -- which was to resolve the legal question as to whether or not an enforceable contract was entered into on December 14th.

MR. WEINTRAUB: We cannot go to Judge Knapp with a proposed judgment now because he would say there's been no determination by the Bankruptcy Court that this has been approved by the court.

THE JUDGE: Let me also inquire --

MR. WEINTRAUB: So any reference to judgments or appeals on judgments I think is not well put.

THE JUDGE: Have all the persons interested in these proceedings have notice of what is going on here now? Is there anyone that might be prejudiced by not being notified?

MR. WEINTRAUB: To the best of my knowledge, everyone that should be notified has been notified. The members of the official creditors committee have been notified, the other interested parties have been notified. The parties that have not been notified are maybe some six hundred and fifty to seven hundred creditors whose interest in toto may be approximately a million dollars; approximately fifty percent of the dollar amount of creditors have not been notified.

But there is an official creditors committee functioning and notice has gone to them. I don't believe that the Act mandates -- that certainly doesn't, it specifically provides that where there is a committee functioning, notice to the committee of a settlement of a controversy is sufficient.

Once again, these proceedings are notice to the whole world, they have been pending for sometime. There is a secretary functioning, creditors do call from time to time. The dockets of this court are open to creditors and certainly anyone that would have any interest would have shown up by this time.

The only part that has raised the question of notice, once again, is the defendant here, who is the plaintiff in the antitrust action -- the defendant both here and in the --

MR. LOWE: I would like Mr. Weintraub to state for the record upon what he bases his knowledge that notice has been sent to the creditors committee and that the creditors committee have considered the propriety of the alleged settlement.

MR. WEINTRAUB: We have an affidavit of service that has been filed here showing service on each member of the creditors committee -- I'm sorry, I understand it has not been filed, I will file it today. Mr. Benenson was here last time. He indicated to the court that he had discussed the matter.

MR. LOWE: With whom?

MR. WEINTRAUB: With the committee, I was present --

MR. LOWE: With members of the committee?

MR. WEINTRAUB: With the full committee, I was present at two meetings with the full committee when this was discussed.

THE JUDGE: Was there not a letter sent by the counsel for the creditors committee?

MR. WEINTRAUB: Secretary, Mr. William Otte is secretary to the creditors committee.

THE JUDGE: They accepted the settlement?

MR. WEINTRAUB: Yes, on December 27,

1976 a letter was addressed to our office from Mr. Otte, indicating as follows:

"Gentlemen: As secretary of the creditors committee in the above-captioned matter, the writer informally polled the committee with respect to the proposed settlement of $225,000 in the antitrust litigation" -- parenthetically it was explained to the court when Mr. Benenson was here a few hearings ago, that it was typographical, that it was $250,000 --

THE JUDGE: I think the record is clear as to what the proposed settlement was.

MR. WEINTRAUB: "The vast majority of the committee voted in favor of a settlement provided that disposition of the funds generated from the settlement can be subject to the committee's deliberation or the further order of the court. Very Truly Yours,

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William Otte. Carbon copies to Mr. Benenson and Mr. Brannigan as chairman of the committee."

I can state that at the meetings of the committee I attended, at least the last two when this was discussed, there was no opposition to the settlement. Questions were asked of Mr. Rackear as to the possibility and the time elements involved in getting the litigation resolved, how long it might take; the expense.

THE JUDGE: Before we get into that, I will hear from Mr. Lowe once more.

MR. LOWE: Judge, you are being asked to approve a settlement without this record reflecting that creditors, including members of the creditors committee, are aware of the fact that $900,000 in losses have been generated by this debtor since October 20th.

They do not know that the money

which they hope to obtain as a result of the settlement will be used in furtherance of the debtor's business. They are completely ignorant on that subject. It wasn't until late last Friday, Your Honor, that this court was made aware of the fact that there were losses of $900,000.

MR. WEINTRAUB: Your Honor, Mr. Lowe raised that at the last hearing.

THE JUDGE: Let him finish, Mr. Weintraub.

MR. LOWE: I respectfully submit, Your Honor, that you should not go forward to consider whether the alleged settlement is in the best interests of this estate unless you hear from creditors and they indicate they are aware of the fact that $900,000 has been lost.

THE JUDGE: I decline your invitation, Mr. Lowe. I am going to go forward with the hearing on whether or not this settlement is in the best interests of the estate.

How do you propose, Mr. Weintraub, to persuade the court that it is?

MR. WEINTRAUB: I thought we'd put in the record the last time sufficient information plus our application in support of it indicating that both the time and expense involved in the litigation, the necessity to obtain the quarter of a million dollars as quickly as possible --

THE JUDGE: Having in mind that there is likely to be an appeal from any order I issue now, why don't you concentrate on making an intelligent record so that the reviewing court will have an opportunity to deal with facts.

You have the principal officer here. If he made an affidavit, perhaps you can follow the line of that and interrogate him.

MR. WEINTRAUB: Mr. Rosenblum.

Your Honor, I might add for the record, just reiterate again what Mr.

Rackear said the last time, who is primary counsel, he is not in a position and Mr. Vogel is here,too,from his office, to indicate to continue this litigation without being compensated on some type of current basis and that efforts have been made to obtain counsel to litigate this on a contingency basis, which have proved fruitless.

THE JUDGE: You have made a statement for the record. It is part of it.

MARVIN ROSENBLUM,

Called as a witness, having been first duly sworn by the Judge, was examined and testified as follows:

EXAMINATION BY THE JUDGE:

Q What is your full name?

A Marvin Rosenblum.

MR. ZIMMERMAN: Might I hand up the affidavit of service of notice to the members of the committee (handing).

EXAMINATION BY MR. WEINTRAUB:

Q What office do you hold with

the debtor corporations?

A I am chairman of the board, president and chief executive officer.

Q Are you familiar with the litigation that was commenced in the United States District Court, Southern District of New York by Precision Polymers against Robintech and other defendants?

A I am.

Q Will you indicate to me approximately when that litigation was commenced?

A This past year.

Q Could you designate approximately what month?

A Well, Mr. Weintraub, I am not an attorney and I really feel that this is a continuation of litigation that was begun with Robintech in September of 1973.

What phraseology you'd use, I don't know. I believe we have been attempting to get Robintech to live up to the obligations of their agreement dating back to then.

Q Have you discussed with your

counsel, Mr. Rackear, and Mr. Rackear's co-counsel, the possibilites of continuing this litigation without compensation?

A I have.

Q What has Mr. Rackear's response been to you?

A That he has many hours invested in this case and he feels that he is going to require some kind of compensation on an ongoing basis.

Q Has Mr. Rackear indicated to you the time that would be involved in proceeding on the antitrust litigation to a final judgment?

A Well, we have had many discussions about that. He has stated to me that based upon the kind of army that has been sent against us, it would substantially require all of his time.

MR. LOWE: I object to this and I am going to object to any discussions he had with his lawyer, they are hearsay.

THE JUDGE: I will allow it to stand.

THE WITNESS: I am also sworn, I believe, Your Honor.

THE JUDGE: That's all right, just answer your counsel's questions, don't get involved in any debate with your opponent.

Q When the initial offer from Robintech of $250,000 was proffered to the company, was it discussed between yourself and our office as well as Mr. Rackear that this would resolve the pending motion to transfer venue?

A Yes.

Q Were you made aware of the fact that that was an important consideration to settling for the $250,000?

A As far as I was concerned, the $250,000 settlement was totally inadequate if it weren't for that venue portion.

Q Were you aware of the fact at that time that Commercial Trading had indicated to the company that if the proceedings were transferred to New Jersey they would not finance the company?

A Yes, I was.

Q Is it your testimony that the

prime consideration for the settlement of this is the retention of the proceedings within the Southern District?

A That is true.

Q Is it also your feeling that if the proceedings were transferred to New Jersey that the company would not be able to survive and work out a plan with its creditors?

A That is true, primarily because it would not have financing.

Q What is your opinion as to the quarter of a million dollar settlement when viewed against the litigation that would have to ensue over the next many years vis-a-vis Robintech and your own involvement in that litigation?

A Well, with the acquiescence of the creditors committee in terms of the use of some of the funds for working capital purposes, it could well mean the survival of the company right now.

I have to look very opportunistically about staying alive now and not worrying about the future.

Q Are you aware of the time and

effort of yourself that would have to be involved in continuing the litigation against Robintech?

A I am aware of the time that I have had to devote to this case up until now and how it has affected the operation of the company and the losses that have been sustained because of the continued pressures on the part of Robintech, both here and in the field, by the way.

Q Is it your opinion that your time and effect can be better spent in trying to rehabilitate the debtor than in using your efforts to continue the litigation against Robintech?

A Yes, I'd like to stay away from court as much as possible, Mr. Weintraub.

Q Were you present at the various meetings of the creditors committee when we discussed with the committee --

MR.LOWE: Judge, he is leading the witness. I think we ought to put an end to this.

THE JUDGE: No, I will allow it.

MR. LOWE: Let Mr. Weintraub get up and testify.

THE JUDGE: No, I think his principal is doing all right.

Go ahead, Mr. Weintraub.

MR. WEINTRAUB: I would object to Mr. --

THE JUDGE: You have one.

MR. WEINTRAUB: I am just saying as far as Mr. Lowe's statement, we do not have an opposition party from either the creditors or any other interested party.

THE JUDGE: Lets not burden the record any more with just colloquy that satisfies your ego.

MR. WEINTRAUB: It doesn't satisfy my ego.

Q At those meetings of the creditors committee, was the committee made aware of the fact that your involvement in the Robintech litigation would take substantial time away from the business of the debtor and debtors in possession?

A Yes.

Q What was the recommendation of the creditors committee to the debtor as to the continuation of this litigation?

A They recommended to me, directly to me, that we should get out of all litigation.

In fact, they refused to give us a few thousand dollars to settle with another party in litigation that we have to hire an attorney, you know, for the use of those funds.

Q Do you recall also making a request to the committee that the committee come up with a fund to continue the prosecution of the litigation against Robintech?

A Yes.

Q What was the response of the members of the committee?

A Well, they were not very happy about financing it.

Q Did they, in fact, refuse to put up any money to continue the litigation?

A Yes.

Q Would you say, Mr. Rosenblum, that there are presently no funds to continue the litigation against Robintech from within the capital of the company?

A Not within my knowledge -- I'm sorry, within the capital of the company, the answer has to be no.

BY THE JUDGE:

Q Did you have a previous experience in financing an antitrust suit against either these same defendants or other defendants?

A Yes, we did, as part of a large group of people. We were partners in litigation against Robintech, with about eleven other people.

Q From that experience do you have some notion as to what the financial costs would be?

A They are substantial, Your Honor.

Q Can you give me some idea as to what it cost you in your previous experience, if you can recall?

A Well, our portion was only several thousand. It then represented about seven weeks of work, if I recall, Your Honor, and it was four years or so ago.

Our portion was about $3,000 or $4,000. Maybe Mr. Vogel can help me on that, but there were -- we were one-sixth or one-sixth or one-tenth of the total cost.

Q Has your counsel given you any estimate as to what it would cost in dollars to finance this particular antitrust lawsuit for a period of, let's say, two, three or four years?

A Not in -- no, no finite number.

Q Any approximate number?

A Well, I know that our antitrust counsel I believe is charging us $125 an hour for his time; that is Alexander Hammond. An associate in his firm was charging, I believe, $60 an hour or he was charging for that associate $60 an hour, plus the time that the general counsel has spent on the case, which has been excessive.

We have had a total cost right now as against a $250,000 settlement; I think of about $50,000 legal fees.

Q Thus far?

A I'm sorry?

Q Thus far?

A Thus far.

Well, Your Honor, the costs are greater than that because we paid a portion of them when we initiated -- we gave monies in advance to Alexander Hammond's firm. I would say our total legal fees thus far probably approximate $75,000.

MR. VOGEL: May I invite the court's attention of something that appears in the record of this proceeding. Both Mr. Hammond's firm and our firm have filed proofs of claim, sworn proofs of claim in this proceeding as to the amount of the legal fees that were incurred prior to October 20th, the date of the filing of the petition. I am speaking from memory, subject to correction by the court's record, but my recollectin is that Mr. Hammond's firm, which is now Hammond & Morton, P.C., used to be Alexander Hammond, P.C., put in a claim for $15,000.

My recollection is that our claim was $38,000 but that we broke out approximately $28,000 as attributable to the antitrust action and another $10,000 for our other legal services.

Now, this was up until October 20th. Since then we have pursued this matter, we have had the motion for summary judgment, et cetera. My understanding is that Mr. Rackear bills for his time at $75 an hour and I bill -- and that he bills for my time at $60 an hour.

THE JUDGE: Thank you.

THE WITNESS: Just one further thing. The principal of Robintech, Inc. told me that they have either already expended or have accrued some $400,000 in its quest to destroy us and those were his words.

MR. LOWE: I move that be stricken.

THE JUDGE: That may be stricken.

BY MR. WEINTRAUB:

Q In view of the time and expense of continued litigation, is it your opinion as the chief operating officer of the debtors that this litigation should be settled at this time for a quarter of a million dollars?

A It is.

MR. WEINTRAUB: I have no further questions.

THE JUDGE: Before you inquire, let me inquire briefly, Mr. Lowe.

BY THE JUDGE:

Q I think you have already stated that it would be necessary for the debtor in possession to obtain at least part of these funds for operating capital; by these funds, I mean the settlement of funds of $250,000?

A I said it would be my preference, yes.

MR. WEINTRAUB: I would just like to clear the record on that. If we were dealing here with a settlement of a quarter of a million dollars in a straight bankruptcy, that would have no relevancy.

I would like to state for the record that -- that our positions on the settlement that the quarter of a million dollars should be paid without regard to what the creditors committee may let us do with it. I don't believe that is part of the determination whether the settlement is in the best interests of creditors. If we had a trustee in bankruptcy and Mr. Rosenblum was testifying, that question would not be asked.

We now have a debtor in possession who has been told by its creditors committee that it may not be able to use this money, although we will make a request to the creditors committee when and if this money ever comes in, that we be able to use it.

I think Mr. Lowe --

THE JUDGE: Isn't it a consideration for this court that if money is available for operating funds, the chances of their coming out of a Chapter XI are enhanced?

MR. WEINTRAUB: Well, I think Mr. Lowe has made it clear that there will be an appeal from whatever follows and we are not sanguine that we will have the use of these funds within the next thirty or sixty days. We are looking other places for funds but I would like to make an unequivocable statement that we believe the settlement should be approved in the best interests of creditors and that we have a quarter of a million dollars at least in hand which can be utilized somewhere down the line as part of a settlement, if not immediately, if they would pay the money immediately. But we do not believe we will have the use of the money immediately.

What we do believe is we will have an end to at least the litigation and the expenses of the litigation.

THE JUDGE: Judge Knapp does not deal directly with one other element of the settlement. That is the withdrawing by Mr. Lowe's clients of their motion to change the venue.

Is that true?

MR. ZIMMERMAN: Yes. Your Honor, that matter was not before Judge Knapp specifically. What was before Judge Knapp was the question of whether the statement for the record, put on the record by Your Honor on December 14, 1976, was a binding agreement.

Now, by the terms of that statement for the record, part of the settlement was a withdrawal with prejudice by Robintech, Shintech and Plastoline of their motion for dismissal or to transfer the proceedings. That is part of the settlement, that is before Your Honor. Its approval, I think, would mandate that this court in effectuating the terms of the settlement would require or deem that there was a withdrawal of that motion.

THE JUDGE: Well, that becomes important in the context of the factor or the money lender, stating that if this matter is transferred to New Jersey, that he will no longer give financing to the debtor in possession.

MR. SCHEFFEL: Well, it is important in that, Your Honor, because it is the debtor's intention that this proceeding survive. It can't survive without financing.

THE JUDGE: Yes, but bring me up to date. Is there any financing being furnished by this particular lender who had made that observation?

MR. SCHEFFEL: Yes.

MR.ZIMMERMAN: Yes, that lender continues to advance eighty-five percent against the debtor's eligible accounts receivable and is the financial source for the debtor's cash now.

They have a security interest in all accounts receivable, equipment and inventory.

MR. WEINTRAUB: I think Mr. Rosenblum's testimony was that the consideration -- one of the prime considerations for the settlement and the agreement to accept the quarter of a million dollars was that the challenge to venue would be withdrawn.

THE JUDGE: All right, I heard it, thank you.

Mr. Lowe.

MR. LOWE: Judge, before Judge Knapp decided the matter before him he received a copy of your decision with respect to the motion to transfer.

I make a representation to the court that I caused a copy of that to be delivered to him and subsequent thereto I spoke to his law secretary who acknowledged having received a copy of your decision.

As a matter of fact, the young lady informed me that independently of my efforts a copy of your decision was sent up to him through the office of the bankruptcy clerk.

When Judge Knapp decided the matter before him, he was aware of what you had done with respect to the transfer.

MR. WEINTRAUB: Your Honor, I object --

MR. LOWE: One second, I have been listening to three different lawyers for one client. I'd like to conclude my remarks.

THE JUDGE: Let's keep it calm.

MR. LOWE: There are three different lawyers representing this debtor.

THE JUDGE: You should be flattered, it takes three to balance you.

THE WITNESS: Mr. Lowe, you have three here, they can speak out.

THE JUDGE: Go ahead, Mr. Lowe.

MR. LOWE: He knew what Your Honor had done with respect to the motion for transfer. Knowing anything my clients did or purportedly agreed to with the debtor or was binding upon this court. This court had an independent responsibility to determine whether or not this proceeding should be transferred.

Nothing Judge Knapp has done, as I understand it, has relieved the court of the responsibility or suggested that the could should do otherwise.

The same reasons which prompted the transfer by you in the first place, Your Honor, have been further aggravated by the fact that there has been a $900,000 loss in this case that was never brought to your attention by this debtor or by the attorney for the creditors committee. If it were not for the fact that I pressed for schedules and an operating statement, I submit that you would not know as of this moment that this debtor lost $900,000.

THE JUDGE: All right, I understand all that.

Let's stop for a minute. Mr. Lowe, do you want to examine the witness?

MR. LOWE: Yes.

MR. VOGEL: May I speak to a portion of the last remark of Mr. Lowe?

THE JUDGE: All right, go ahead.

MR. VOGEL: Mr. Lowe stated that he caused to be delivered a copy of your decision to Judge Knapp. I represent to this court that our office was not told of this. We are attorneys of record in that case. I am sure if it was delivered to Judge Knapp, Judge Knapp did not consider it. He would not consider a matter ex parte.

THE JUDGE: All right, you have made your statement, you can inquire.

BY MR. LOWE:

Q How much cash does this debtor have today to operate its business?

A For the past ten years we have operated from our float.

Q What kind of an answer is that?

A What I am saying is there is no cash balance in the bank and very rarely is there a cash balance in the bank because of our cost of money.

Q You do not have a dime in your bank account; isn't that correct?

A But we have availability, sir, from our financing source. When we request a draw down, those funds are wired into our account.

Q Do you have any money in your bank account as of this moment?

MR. WEINTRAUB: I object to it on the grounds --

MR. LOWE: May I respectfully request that you direct the answer to that question.

THE JUDGE: If there is an objection, you have to give me time.

MR. WEINTRAUB: I object on the ground of relevancy. I thought we were making a record whether the settlement is reasonable and in the best interests of creditors.

Mr. Lowe is going back to a matter that was held and closed and adjourned over to April 26th.

THE JUDGE: Your objection is overruled, he may proceed.

Answer the question, Mr. Rosenblum. You said, for the last ten years you have had this practice where you don't have any money in the bank, you live on a float.

THE WITNESS: That's exactly right, we write checks on a given day and the funds are transferred on that given day into our account to cover it.

So there are no what you would call or a bank would call compensating balances.

Q How much money is available to you at the moment? How much cash is available to you at the moment on the basis of the business you have done and the orders you filed?

A Today I would say that there would be about $42,500 available to us.

Q Based upon what?

A Based upon yesterday's shipments.

Q What are today's shipments going to be?

A I would anticipate roughly about the same amount.

Q How much money do you need to turn this business around after a $900,000 loss since October 20th to March 6th?

MR. WEINTRAUB: I object again on the question of relevancy.

THE JUDGE: I will allow it.

A We would need -- at that rate we would be operating effectively -- if we were producing at that rate we would be operating at a break even, approximately, at that same rate.

Q At $42,000 ---

A Currently I am talking about, currently.

Q You are breaking even with $42,000?

A Yes, and I even intend to start making money this week.

Q What are your inventory of resins at this moment?

A We don't have one pound of inventory of resin.

Q Will you have an inventory of resin tomorrow?

A We will not have an inventory of resin tomorrow.

Q You tell me when you might reasonably expect to have any resin inventory?

A We have 40,000 pounds a day of material that we are converting every single day, Mr. Lowe. I intend to be up to 55,000 pounds a day as of Monday and possibly up to 70,000 pounds a day by the end of next week. I do not have one pound of inventory because you don't understand, Mr. Lowe, and I wish is you would ask like a gentleman, I will give you all of the operating facts.

THE JUDGE: Just answer, he seems to be acting like a gentleman.

A At no point during this manufacturing operation will there be one pound of material, raw material, that is of resin, in inventory.

Q Where is your resin going to come from?

A From hopper cars that are currently on the tracks.

Q What quantity is represented by that?

A Well, I don't know exactly what is in our plant right now but I'd say maybe there is 600,000 pounds. Maybe Mr. Tjia can help me but I'd say about 600,000 pounds. About three cars, three hopper cars.

Q What is the source of that supply?

A I believe right now the material that is on the tracks Tenneco -- I'm awfully sorry, Sumi Tomo. We do buy from Tenneco, however, on the same basis.

Q Do you need the $250,000 which might result from the alleged settlement to continue the operation of your business?

A Do we need it? Well, not as we are currently operating.

Q You could get along without it; is that correct?

A No, I didn't say we can get along without it. I say as we are currently operating, that is operating at a loss, we don't require the $250,000.

Q Would that $250,000 be necessary in order to convert a loss in operations to a profit?

A That would be one of the ingredients, yes, or a portion thereof.

Q What would be the other ingredients?

A The other ingredients would be as I discussed the last time, potential equity inventors in the company with whom we are negotiating. The possibility of the proceeds of a private sale of equipment.

Q What is your prospect of getting equity investors in this company?

A We are negotiating right now and I am looking at active situations. I mean, so much so, that one is running us down at the moment. We are looking at active situations.

Q Could you expect to get any part of this $250,000 relief by the creditors committee?

A I would hope to,yes.

Q Have you asked them?

A Yes.

Q Waht do they say?

A They said that they would consider it.

Q Was that before or after they found out you had run up a $900,000 loss?

MR. WEINTRAUB: I object.

THE WITNESS: Mr. Lowe, I have said to the --

THE JUDGE: I will allow the question.

A I had said in November, as I said today,

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that given the availability of cash resources that -- if we had availability of raw materials, that we would be sustaining throughout the winter months a loss of between $150,000 and $200,000 every month.

I haven't been too far off from Mr. Lowe, and you didn't need those figures to come up with almost the final projection. In that regard I was a pretty decent crystal ball gazer.

Q Were the statements made by you in your 11-2 affidavit with respect to the prospects of this business true and correct?

A Yes, they are -- well, as far as I know, they are, yes.

Q Do you recall telling the court that you expected to operate profitably after October 20th?

A At some point after October 20th, yes.

Q When will we arrive at that point?

A We are at it next week, Mr. Lowe.

Q Next week?

A Yes.

Q You certainly have something to look forward to. Does Mr. Rackear have a lien on the $250,000?

A I am not an attorney but I understand there is such a thing as an attorney's lien or whatever it is called.

MR. LOWE: Can we find out how much that is?

THE JUDGE: I think we are getting pretty far afield, Mr. Lowe. If I hear an objection, I will sustain it.

MR. WEINTRAUB: I was just going to state for the record, I think Mr. Rackear has previously stated to the court that he approximately somewhere in the neighborhood of $40,000 which he claims as an attorney's lien against that fund, in conjunction with Mr. Hammond and the eventual disposition of course would have to be up to the court on that.

THE WITNESS: I think his portion is a little less.

THE JUDGE: I will sustain the objection if that is what you are saying.

Q Have you submitted to this court

an order that was referred to when you were here last with respect to obtaining sources of resin?

MR. ZIMMERMAN: May I respond to that question?

THE JUDGE: Do you object to the question? That's how I rule.

MR. ZIMMERMAN: I object to the question.

THE JUDGE: What grounds?

MR. ZIMMERMAN: Relevancy. What has it got to do with this settlement? Maybe it has to do with an XI-4 hearing.

THE JUDGE: The witness has testified to that and generating sales from the resins, I will allow it.

Q Has such an application and order been presented to this court?

A As far as I know, I know it's been prepared but not submitted.

Q Do you know if Sumi Tomo changed its position from the time we were last here in this courtroom?

A I do not know.

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MR. LOWE: May I ask counsel to make a statement with respect --

THE JUDGE: No, Mr. Lowe, we are getting too far afield. The matter before me is whether or not this settlement, if it becomes final, is this the best interests of this estate. We are not going to try every other issue that might be involved, other lawsuits or other claims.

MR. LOWE: I have no further questions.

THE JUDGE: Does anyone else want to inquire of this witness?

(No response.)

THE JUDGE: Hearing no response, you may step down.

Mr. Weintraub, have you prepared proposed findings and conclusions?

MR. WEINTRAUB: We have but will have to be incorporated to include Mr. Rosenblum's testimony of today. We have prepared them based on the last hearing, not realizing that Your Honor might want further testimony.

MR. LOWE: I have not been served with a copy of anything.

THE JUDGE: Serve a copy on Mr. Lowe.

MR. ZIMMERMAN: Mr. Lowe (handing).

THE JUDGE: Let the record indicate that Mr. Lowe is being furnished with a copy.

MR. WEINTRAUB: We will have to amend the findings of fact, Judge.

THE JUDGE: How long is it going to take?

MR. WEINTRAUB: We will have them today.

MR. ZIMMERMAN: We will pen it in and we will present it at the conclusion of the hearing.

THE JUDGE: No, do it in a more formal fashion. Revise them, get them back to my office this afternoon and I will consider them at that time, together with a proposed order.

MR. WEINTRAUB: Your Honor, we also

had prepared a proposed order vacating your order of March 16th, which was the order that was --

THE JUDGE: You can leave the order but serve a copy of that on Mr. Lowe, too. I want to reflect on that.

MR. LOWE: Was it your intention to vacate that order or staying that order?

THE JUDGE: I'd be more inclined to stay it rather than to vacate it.

MR. LOWE: I should think so.

THE JUDGE: I don't know what kind of proposed order they have.

MR. LOWE: I have not been served with a copy.

MR. ZIMMERMAN: Let the record indicate that I am handing Mr. Lowe a copy of the proposed order vacating this court's order of March 16th, 1977.

THE JUDGE: Well, one of the tbings I want to reflect on is that if I refuse to vacate the order, there is an appeal pending, I gather, my decision, is there not?

MR. LOWE: Your Honor has stayed any further proceedings with respect to that appeal.

MR. ZIMMERMAN: To make the record clear, Your Honor, the order to show cause that brought on the hearing which is being heard today stays the effect of your March 16, 1977 order and also tolls the time for filing a notice of appeal in regard to the,pending your determination of the motions before you today.

THE JUDGE: What I do have to sort out and consider is if this matter were transferred to the State of New Jersey, in effect, I would be imposing a new level of expenses, receiver and counsel for receiver in the face of Judge Knapp's finding that there was a settlement reached here.

I do want to consider all the elements. As soon as you get the papers in, I will concentrate on that.

MR. WEINTRAUB: The only adjourned date that we have is the one that Your Honor has set on the adjourned indemnity hearing.

THE JUDGE: What date is that?

MR. WEINTRAUB: That is April 26th at 11 o'clock.

We will deem everything else submitted.

MR. LOWE: Judge, would you enter an order with respect to my application for indemnity or would you consider a formal order? I don't know how else I can have a vehicle for considering an appeal.

MR. WEINTRAUB: I think the judge indicated last time if you wanted to submit an order, you should.

THE JUDGE: Why don't you bring on an application requesting indemnity, I will give you a date earlier than the April 26th date --

MR. LOWE: I am talking about the indemnity hearing that Your Honor concluded when we were last here.

MR. WEINTRAUB: Your Honor denied Mr. Lowe's request and told him --

THE JUDGE: Why don't you submit an order reciting the facts and the fact that I denied your application.

MR. LOWE: I would also ask Your Honor to stay the effect of any order that you enter here in order to give me an opportunity to take an appeal.

MR. ZIMMERMAN: What order is --

THE JUDGE: Let me ask the question, Mr. Zimmerman.

I don't quite understand.

MR. LOWE: Your Honor, I presume, is going to enter an order with respect to whether or not the alleged settlement is in the best interests of the estate.

I would respectfully request that on the basis of the record Your Honor stay the effect of that order in order to enable me to take an appeal from that order.

MR. WEINTRAUB: The appropriate place for that stay would be --

THE JUDGE: Hold on.

Well, I certainly would like to put it in a posture so that if you'd like to appeal, you can appeal.

MR. LOWE: That is all I am asking for.

THE JUDGE: What could I do to implement my finding, assuming that I find it is in the best interests of the estate and --

MR. LOWE: I presume that order would direct us to comply with the terms of the alleged settlement within a specified period of time.

MR. ZIMMERMAN: No. Your Honor, the proposed order that we have already drafted basically does nothing more than two things.

One thing it does it approves

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the settlement pursuant to section -- I believe it is 27 of the Bankruptcy Act and I believe Rule 919A of the Rules of Bankruptcy Procedure.

Secondly, in terms of implementing it, implementing the settlement, it would provide for the dismissal with prejudice of the application of Robintech et al for transfer or dismissal.

That is the terms of the settlement and that is what deals with the settlement. We do also have pending on the same document but I would guess a different motion to vacate or have a rehearing in regard to your decision of March 16th, which is in essence a separate matter which we believe the result of flows from the result of your approval or disapproval of the settlement.

MR. LOWE: I don't know whether I have an answer to that question, Your Honor.

MR. WEINTRAUB: What Mr. Lowe is

asking for I think Your Honor, if you render a decision that it is in the best interests of the estate, that you stay any enforcement of that order, which is not, I don't think, the appropriate time to ask for it.

If you do in fact enter it, he has his rights to appeal, as we did on the question of the venue question. Your Honor did not put a automatic stay on it.

THE JUDGE: To answer your question, Mr. Lowe, I will act in such a way as to make the order sufficiently final to give you an opportunity to appeal. I will not order anything done so speedily that you will not be able to take advantage of your right of appeal.

MR. VOGEL: Your Honor, I have two requests.

Number one, that a decision be made on this as speedily as possible for the considerations that have been adduced heretofore; and number two, that Your

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Honor do nothing that would prevent us immediately from going to Judge Knapp for such other and further relief as might be appropriate in the circuit.

Furthermore, Your Honor, it is our intention to prosecute this matter as vigorously and as expeditiously as possible. With respect to any appeal, it has been stated that it might take a couple of months but we would make such appropriate applications to the appeal court or otherwise as to bring this on as quickly as possible.

Your Honor, in our view, this is a matter of extreme urgency, for the reasons set forth and we would appreciate your consideration.

THE JUDGE: Prompt action, all right.

MR. LOWE: I'd like to make a statement, if I may.

I am working under time constraints. I would respectfully request that I have until Tuesday to consider the proposed findings and submit counter-findings.

THE JUDGE: I will hear from counsel for the debtor in possession.

MR. ZIMMERMAN: Your Honor, first of all, I don't know if I have ever submitted findings of fact that are as simple and straightforward as this.

The next thing is going to be heard is that he wants the transcript of the record and then we will have two weeks.

THE JUDGE: I anticipated your argument. Let me inquire, what harm would -- today is Thursday, Friday, Monday, what is wrong with giving him until Monday at 5 o'clock?

MR. VOGEL: Your Honor, he has had notice of this application for some time.

THE JUDGE: You will make the same argument that it's all aimed just to delay.

MR. VOGEL: Your Honor, I gave

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the considerations before. I think there comes a time to stop this delay.

I think, Your Honor, we are dealing with a debtor that can use the money and we want to get it to them as quickly as possible. These little delays add up, Your Honor.

We intend to prosecute this as quickly and as vigorously as possible and we think that if there is nything of substance that Mr. Lowe has to say, it should be said now or should have been said at the hearing this morning.

MR. ZIMMERMAN: May I just add one thing, a thought just popped into my mind as I sat down.

I think from the posture of what has happened before this court, we know what the position of Robintech et al is. I believe they are askingfor this extra time so that they can submit an order to this court denying their motion for indemnity, take an appeal on it

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and try and bring that issue on ahead of this.

I don't see that one has anything to do with the other.

THE JUDGE: If Mr. Lowe brought in an order now embracing what took place with respect to his application for indemnity, the fact that I denied it, I did sign it.

MR. ZIMMERMAN: Of course.

THE JUDGE: He can appeal from that.

MR. ZIMMERMAN: He should have asked you to so order it on the record Monday.

THE JUDGE: I am not telling him how to run his law practice but Mr. Lowe has not misrepresented anything to me in the three and a half years that I have been in this elevated position.

Whatever findings you have, you have in my hands by Monday, 4 o'clock, serve a copy on your opponent and I will act on it either before the end of the day on Monday or Tuesday.

MR. WEINTRAUB: Very good.

- - -

CERTIFICATE

I, IRWIN A. MOORE, a Shorthand Reporter and Notary Public of the State of New York, do hereby certify:

That, MARVIN ROSENBLUM, the witness whose examination is hereinbefore set forth, was duly sworn, and that such examination is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

XIII

Supersedeas Bond

INA INSURANCE COMPANY OF NORTH AMERICA, PHILADELPHIA, PENNSYLVANIA

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

PRECISION POLYMERS, INC., PRECISION THERMOPLASTICS CORP.,

Plaintiffs

vs.

ROBINTECH INCORPORATED, SHINTECH INCORPORATED, PLASTILINE, INC.

Defendants

In the Matter of Precision Polymers, Inc, Precision Thermoplastics Corp., and Flo-Tite Plastics Corp.

Supersedeas Bond
UNDERTAKING ON APPEAL
for $277,750.00
Files 76 CIV. 1746
76 B 2358
76 B 2359
76 B 2360

Filed:
U.S.D.C.
April 4-77
SDNY.

KNOW ALL MEN BY THESE PRESENTS:

That, INSURANCE COMPANY OF NORTH AMERICA, a corporation organized under the laws of the State of Pennsylvania, and having its principal office in the City of Philadelphia, in said State and having an office and usual place of business at No. 79 John Street, in the Borough of Manhattan, in the City of New York, as Surety, is held and firmly bound unto the above named Precision Polymers, Inc. Precision Thermoplastics Corp., in the sum of TWO HUNDRED SEVENTY SEVEN THOUSAND SEVEN HUNDRED FIFTY AND 00/100 DOLLARS ($250,000 plus 11% interest and costs) to be paid to the said Plaintiffs for the payment of which well and truly tobe made, said Surety binds itself, its successors and assigns, firmly by these presents.

Sealed with our seals and dated the 4th day of April, 1977.

WHEREAS, Robintech Incorporated, Shintech Incorporated, Plastiline, Inc., Appellants, have prosecuted an appeal to the United States Court of Appeals forthe Second Circuit, to reverse the judgment entered the 23rd day of March, 1977, in the office of the Clerk of the above-named Court, against the said Appellant, and in favor of Precision Polymers, Inc., Precision Thermoplastics Corp., Appellee.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the above named Robintech Incorporated, Shintech Incorporated, Plastiline, Inc., shall satisfy the judgment herein in full together with costs, interest and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and shall satisfy in full such modification of the

- Continued -

judgment and such costs, interest, and damages as the Appellate Court may adjudge and award, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

INSURANCE COMPANY OF NORTH AMERICA

By: F. Asiner
Attorney in Fact

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APRIL 4-77

APPROVED AS TO FORM
AND SUFFICIENCY.

/S/ RAYMOND F. BURGHARDT
CLERK.

XIV

Findings of Fact, Conclusions of Law and Order of the Hon. John J. Galgay, Bankruptcy Judge, dated April 5, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
------------------------------------X

In re:

PRECISION POLYMERS, INC.,
PRECISION THERMOPLASTICS CORP.,
FLO-TITE PLASTICS CORP.,

Debtors.

------------------------------------X

In Proceedings for an
Arrangement Nos.

76 B 2358
76 B 2359
76 B 2360

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named debtors having moved the Court by application dated March 22, 1977, and Order to Show Cause dated March 23, 1977 for an order pursuant to §§302 and 27 of the Bankruptcy Act and Rules 11-63 and 919(a) of the Rules of Bankruptcy Procedure for the approval of a compromise with Robintech Incorporated, Shintech Incorporated and Plastiline Inc. (hereinafter "Robintech et al.") whereby a certain civil action would be settled for the sum of $250,000 and Robintech et al. would be deemed to withdraw with prejudice their motion for dismissal or transfer of the above entitled arrangement proceedings; and it appearing that notice of said hearing was given to the members of the Official Creditors' Committee pursuant to Rule 203(f) of the Rules of Bankruptcy Procedure; and said hearing having come on before the undersigned on the 28th and 31st days of March, 1977,

NOW, upon the Order to Show Cause dated March 23, 1977 and the application annexed thereto; upon the answer of Robintech et al. dated March 25, 1977; and after hearing LEVIN & WEINTRAUB and BERNARD RACKEAR, P.C., attorneys for the debtors in possession, Charles H. Weintraub, Bernard Rackear, George Vogel and Daniel A. Zimmerman, Esqs. of counsel, and Jay R. Benenson, Esq., attorney for the Official

Creditors' Committee in support of the said application; and after hearing KRAUSE, HIRSCH & GROSS, attorneys for Robintech et al., Sheldon Lowe and John Scheffel, Esqs., of counsel, in opposition of said application; and upon the record made before me; and after due deliberation;

I hereby make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On March 28, 1977 and March 31, 1977 a hearing was held before the undersigned on notice to the members of the Official Creditors' Committee to determine whether the Court should approve a compromise between the debtors in possession and Robintech et al.

2. The debtors in possession and the Official Creditors' Committee recommend approval of the offer of compromise.

3. The compromise will result in an increase of the assets of the estate and will be beneficial to the creditors.

4. The compromise will result in a withdrawal with prejudice of motion to dismiss or transfer these proceedings made by Robintech et al. which is beneficial to the estate.

CONCLUSIONS OF LAW

5. There is an enforceable contract of settlement entered into between Robintech et al. and the above-named debtors in possession.

6. The proposed settlement is reasonable and in the best interest of the debtors and their creditors.

ORDER

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, it is

NOW, on motion of LEVIN & WEINTRAUB, attorneys for the above-named debtors in possession.

ORDERED that the compromise between the above-named debtors in possession and Robintech et al. calling for the payment of $250,000 by Robintech et al. to the debtors in possession and for the withdrawal with prejudice of the motion made by Robintech et al. for the dismissal or transfer of the above-entitled arrangement proceedings, be, and it hereby is, approved; and it is further

ORDERED, that the motion to dismiss or transfer the above-entitled arrangement proceedings made by Robintech et al. is hereby deemed withdrawn with prejudice.

Dated: New York, New York
April 6, 1977

Bankruptcy Judge

Ordered, that the balance of the motion made pursuant to Rule 923 by the debtor-in-possession dated Mar 23 197, be and the same is held in abeyance pending the entry of a final non appealable order by the United States Court of Appeals for the Second Circuit, in Connection with the appeal taken from the Memorandum and Order of the Honorable Whitman Knapp, United States District Judge dated March 18, 197.

Dated - April 5, 1977
New York N.Y.

John J Galgay
Bankruptcy Judge

United States of America)
Southern District of New York) ss

I, JOHN J. GALGAY, Bankruptcy Judge, in and for [illegible] the within instrument is a true and correct copy of the original as the same [illegible]

In witness whereof, I hereunto set my hand this 5th day of April, 1977
John J. Galgay

XV

Notice of Appeal to the District Court, dated April 6, 1977

U.S. DISTRICT COURT
FILED
APR 26 1977
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----------------------------------x

In re:

PRECISION POLYMERS, INC., 76 B 2358
PRECISION THERMOPLASTICS CORP., 76 B 2359
FLO-TITE PLASTICS CORP., 76 B 2360

Debtors.

77 CIV. 2015

ROBINTECH INCORPORATED,
SHINTECH INCORPORATED,
PLASTILINE, INC.,

Appellants,

v.

PRECISION POLYMERS, INC.,
PRECISION THERMOPLASTICS CORP.,
FLO-TITE PLASTICS CORP.,

Appellees.
-----------------------------------x

NOTICE OF APPEAL TO DISTRICT COURT

FILED
APR 7 1977
JOHN J. GALGAY
Bankruptcy Judge

Rt. 5.3.77

ROBINTECH INCORPORATED, SHINTECH INCORPORATED and PLASTILINE, INC., the Appellants, appeal to the District Court from the Findings of Fact, Conclusions of Law and Order of the Bankruptcy Judge entered in this case on April 5, 1977, relating to the approval of a compromise of a certain civil action now pending in the United States District Court for the Southern District of New York before the Honorable Whitman Knapp, United States District Judge.

The parties to the order appealed from and the names and addresses of their respective attorneys are as follows:

KRAUSE, HIRSCH & GROSS
Attorneys for Robintech Incorporated,
Shintech Incorporated and Plastiline, Inc.
41 East 42nd Street
New York, New York 10017

LEVIN & WEINTRAUB, ESQS.
Attorneys for Debtors
225 Broadway
New York, New York 10007

JAY R. BENENSON, ESQ.
Attorney for Creditors' Committee
744 Broad Street
Newark, New Jersey

Dated: New York, New York
April 6, 1977

KRAUSE, HIRSCH & GROSS
By: ______________________
Member of the Firm
41 East 42nd Street
New York, N.Y. 10017

XVI

Stipulation Withdrawing Appeal
filed March 25, 1977,
dated May 3, 1977

FILED
MAY 3 1977
SECOND CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PRECISION POLYMERS, INC. and
PRECISION THERMOPLASTICS CORP.,

Plaintiffs-Appellees,

- against -

ROBINTECH, INCORPORATED,
SHINTECH, INCORPORATED and
PLASTILINE, INC.,

Defendants-Appellants.

STIPULATION DISMISSING APPEAL

In the Matter

of

PRECISION POLYMERS, INC.,
PRECISION THERMOPLASTICS CORP.,

Debtors-Appellees,

and FLO-TITE PLASTICS CORP.,

Debtor.

Docket No. 77-5007

It is hereby stipulated and agreed by and between the parties hereto that the appeals filed herein on March 25, 1977 shall be and hereby are dismissed without prejudice, without costs to either party, except that Defendants-Appellants shall pay whatever fees, if any, are due.

Dated: New York, New York
May 3 , 1977

BERNARD RACKEAR, Professional
Corporation
Attorneys for Plaintiffs-Appellees

By:
25 West 43rd Street
New York, New York 10036
Tel: (212) 868-4470

CAMP
287
334

LEVIN & WEINTRAUB
Attorneys for Plaintiffs-Appellees

By:
225 Broadway
New York, New York 10007
Tel: (212) 962-3300

KRAUSE, HIRSCH & GROSS
Attorneys for Defendants-Appellants
Robintech Incorporated and Shintech,
Incorporated

By: Sheldon Lowe
Sheldon Lowe, A Member of the Firm
41 East 42nd Street
New York, New York 10017
Tel: (212) 986-1122

ROCKWOOD, EDELSTEIN & SHAW
Attorneys for Defendant-Appellant
Plastiline, Inc.

By: William O. Rockwood
P.O. Box 800
Briarcliff Manor, New York 10510
Tel: (914) 762-1700

SO ORDERED:
MAY 3, 1977

~~MURRAY I. GURFEIN~~
USCJ

(A true copy.
(
{ Clerk
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XVII

Opinion of the Hon. Whitman Knapp, dated June 6, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -

In re:

PRECISION POLYMERS, INC., :
PRECISION THERMOPLASTICS CORP.
FLO-TITE PLASTICS CORP., : **OPINION**

Debtors. : 76 B 2358
- -x 76 B 2359
76 B 2360

APPEAL BY ROBINTECH INCORPORATED, :
SAINTECH INCORPORATED AND
PLASTILINE, INC., FROM ORDER :
OF APRIL 5, 1977
- -x

#45998

This is an appeal from an order of Bankruptcy Judge Galgay approving a settlement of various disputes between the Debtors-Appellees and the Appellants.

No substantive issues are raised on this appeal. Appellants do not suggest that the settlement was other than advantageous to the creditors. Instead they press the argument that the bankruptcy court was without jurisdiction because a notice of appeal from our decision of March 18, 1977 - which has since been dismissed on consent - had been filed. They further claim that the Bankruptcy Judge abused his discretion in approving the settlement, particularly in directing that notice of the proposed settlement be given to the Creditors Committee rather than to all the creditors. We reject both contentions.

With respect to the jurisdictional question, we find

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JUN 10 1977

ample authority for the proposition that an appeal taken from a non-appealable order does not divest the lower court of jurisdiction. "Otherwise, a litigant could temporarily deprive a court of jurisdiction at any and every critical juncture." Helgson v. Mahoney [illegible] 1972) 460 F.2d 326, 328 9 Moore's Federal Practice (2d ed) ¶[illegible] 736-39.[1] Here, our decision appealed from was manifestly non-final. Moreover, even if our decision were appealable (so that the district court was stayed), the appellants filed their notice of appeal only in the civil case before us, 76 Civ. 1746, not from our simultaneous remand of the bankruptcy case to Judge Galgay. Accordingly, there was no basis upon which the bankruptcy court could have been stayed. "[The] well-recognized rule that a court is without jurisdiction to modify a decision during the pendency of an appeal is inapplicable here where two independent proceedings were involved." Compania Espanola de Pet[illegible] S.A. v. Nereus Shipping (2d Cir. 1975) 527 F.2d 966, 972. 9 Moore's Federal Practice, supra. Further, it is clear that the filing of a supersedeas bond, designed pursuant to Rule 62 of the Federal Rules [illegible] Civil Procedure to stay execution of a judgment, was irrelevant to the bankruptcy court's jurisdiction. Finally, the appeal was withdrawn before the Court of Appeals took any action, and it would be a wasteful duplication of judicial effort to require Judge Galgay to conduct proceedings concerning the settlement all over again.

We find no basis upon which we could conclude that Judge Galgay abused his discretion in approving the settlement. Appellants have not persuaded us that the Creditors Committee was [illegible] evaluating the settlement proposal before it, or [illegible] in its action. Under the particular circumstances of this case, [illegible]

[illegible] perfectly [illegible] to be given [illegible] Judge [illegible] discretion directed.

Accordingly, [illegible] Judge Galgay's approval of the settlement. [illegible] judgment [illegible] 1976 [illegible] holding [illegible] of this appeal.

SO ORDERED.

Dated: New York, N.Y.
June 6, 1977.

MILTON [illegible]

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FOOTNOTE

1/ The circumstance that we may - in ignorance of the Second Circu decision - have orally expressed contrary views on other occasio is of course irrelevant.

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United States District Court
for the
Southern District
of
New York

In re:
PRECISION POLYMERS, INC.,
PRECISION THERMOPLASTICS CORP
FLO-TITE PLASTICS CORP.,
Debtors.

APPEAL BY ROBINTECH INCORPORATED, SHIPTECH INCORPORATED AND PLASTILENE, INC., FROM ORDER OF APRIL 5, 1977.

OPINION

WHITMAN KNAPP, D. J.

76 B 2358
76 B 2359
76 B 2360

XVIII

Notice of Appeal to the United States Court of Appeals, dated July 8, 1977

FILED

JUL 8 4 07 PM '77

S.D. OF N.Y.

Fee Paid

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---x

In the Matter

of

PRECISION POLYMERS, INC., PRECISION THERMOPLASTICS CORP. and FLO-TITE PLASTICS CORP.,

Debtors.

---x

In Proceedings For An Arrangement

No. 76 B 2358 WK
76 B 2359
76 B 2360

APPEAL BY ROBINTECH INCORPORATED, SHINTECH INCORPORATED and PLASTILINE INC.

---x

NOTICE OF APPEAL

Notice is hereby given that Robintech Incorporated, Shintech Incorporated and Plastiline, Inc., hereby appeal to the United States Court of Appeals for the Second Circuit from the Order and Opinion of the Honorable Whitman Knapp, United States District Judge, entered June 10, 1977, affirming the Bankruptcy Court's order of April 5, 1977 approving a settlement between the Appellants and Debtors, above-named.

Dated: New York, New York
July 8, 1977

Forms C+D
+40 day
notice given

KRAUSE, HIRSCH & GROSS
Attorneys for Appellants

By: ______________________
A Partner
41 East 42nd Street
New York, New York 10071
(212) 986-1122

TO:

LEVIN & WEINTRAUB
Attorneys for Debtors
225 Broadway
New York, New York 10007

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STATE OF NEW YORK
COUNTY OF NEW YORK:

SAM SCHNEIDER, being duly sworn deposes and says that deponent is not a party to the action, is over 18 years of age and resides at 139-15 88th Road, Jamaica, SS New York 11435. That on the 8th day of August, 1977, at 25 West 43rd Street, New York City, deponent served

two (2) true copies of the within Joint Appendix upon Bernard Rackear, P.C., the attorney for Appellees herein; by leaving a copy thereof at his office with Leslie Handler, a secretary of said office.

Sam Schneider

Sworn to before me this
8th day of August, 1977

MARK FIEDLER
Notary Public, State of New York
No. 31-4636381
Qualified in New York County
Commission Expires March 30, 1978

Service of 2 copies of the
within ______ is hereby
admitted this 8/8/77 day of
______ 19__
Signed Maureen Cullen
Attorney for Texas Instruments

Service of ______ copies of the
within ______ is hereby
admitted this ______ day of
______ 19__
Signed ______
Attorney for ______